

# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

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## HEARINGS

BEFORE THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JANUARY 24, FEBRUARY 26, MARCH 19, APRIL 11, AND APRIL 25, 2002

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### PART 3

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**Serial No. J-107-23**

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Printed for the use of the Committee on the Judiciary



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**NOMINATIONS OF MICHAEL MELLOY, OF IOWA, TO BE CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT; JAMES GRITZNER, OF IOWA, TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA; ROBERT BLACKBURN, OF COLORADO, TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO; CINDY JORGENSEN, OF ARIZONA, TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA; RICHARD LEON, OF MARYLAND, TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA; AND JAY ZAINY, OF LOUISIANA, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

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**THURSDAY, JANUARY 24, 2002**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 2:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Maria Cantwell presiding.

Present: Senators Cantwell, Leahy, Kennedy, Grassley, Kyl, and DeWine.

**STATEMENT OF HON. MARIA CANTWELL, A U.S. SENATOR  
FROM THE STATE OF WASHINGTON**

Senator CANTWELL. The Senate Judiciary Committee will come to order.

Good afternoon. I would like to welcome everyone here today to our first Senate Judiciary Committee hearing of the year. We are here to consider the nominations of six individuals to the Federal Bench, one nominee for the Eighth Circuit Court of Appeals and five nominees to the district court.

We are fortunate to have a talented group of nominees with us, and I would like to extend my welcome to them and to their families who are here and the friends who have joined them today.

I am pleased to be able to chair this first hearing for Senator Leahy, and I would also like to thank him for the leadership that

he has shown on the issue of judicial nominations since taking over the committee last summer.

In just 6 months, we have already had 11 hearings on 34 different judicial nominees. This is more than the number of judges who received a hearing in the entire first year of the Clinton administration. This has required really a very significant effort on the part of the committee and the chairman, so I applaud him for that.

Hearings were held during the August recess; during the week of September 11, requiring that nominees drive through the night to be here; and hearings have been held during the period when anthrax contamination closed the Hart Senate Office Building. So, again, I appreciate everybody's indulgence. As a result of those hearings, 28 qualified judges have been confirmed and sent to the Federal courts around the country. I am confident that we will soon confirm additional nominees now that the Senate is back in session.

By scheduling this hearing today, just one day into the new Senate session, this committee sends a message that it will continue on a schedule to hold hearings and vote on judicial nominees in a responsible manner.

I would like to make special note of two of the nominees here today from the State of Iowa. They are here with the support of one of the committee's longest serving members, Senator Grassley, who I know is on his way down. They are also here with the support of Senator Harkin—we appreciate him being here as well—which shows that there is bipartisan support for these nominees.

Senator Kyl, who has just joined us, another valued member of this committee, also has a nominee to the district court here, and it is an extra pleasure for me to be chairing this hearing with in attendance and working to confirm this nominee promptly from his State.

The nominees here today all have strong records that demonstrate an ability to analyze complex and important legal concepts in a manner befitting a Federal judge. Their records reflect a commitment to our fundamental constitutional protections and rights, including the advancement and protection of civil rights and liberties for everyone.

Several of the nominees are here today with bipartisan support from their delegations. We take that support and sponsorship seriously. It is my opinion that the dispute over judicial nominees could become a thing of the past if we were to see more nominees like these, nominated after consultation with the Senate.

As Federal judges, these nominees before us today will have a vital role to play at a difficult time in our Nation's history. I am confident that they will take this responsibility seriously and ensure that the decisions that they make demonstrate fair-mindedness and rely on a rich history of judicial precedent.

Before we go on to have the nominees come forward, we are going to hear from several House and Senate members who are here.

I don't know, Senator Kyl, if you had an opening statement that you wanted to make. If not, I will go to our various colleagues here

who have given of their time to come and speak on behalf of these nominees.

**STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE  
STATE OF ARIZONA**

Senator KYL. Madam Chairman, in view of the large number of our colleagues who are present and the importance of moving along, I will simply note that I hope that we will indeed move with alacrity on the nominations both for district and court this year to fill the over 100 vacancies that currently exist.

I appreciate the chairman holding this hearing. I appreciate your chairing the hearing today, and I will have more to say about the nominee from the State of Arizona very briefly.

Thank you.

Senator CANTWELL. Thank you, Senator Kyl.

We will give Senator Grassley an opportunity here to decide whether he wants to—Senator Grassley, we want to give you an opportunity to introduce your nominees, if you are comfortable in doing it at this time. Being the most senior member of our committee here and a longstanding member, we want to give you that honor of being first in expressing your thoughts.

**PRESENTATION OF MICHAEL MELLOY, NOMINEE TO BE CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT AND JAMES GRITZNER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA BY HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA**

Senator GRASSLEY. First of all, I apologize for being late, but I was managing the stimulus package on the floor.

I have the pleasure today of introducing to the committee two distinguished Iowans who have been nominated to the Federal bench. Judge Michael Joseph Melloy has been nominated to serve as U.S. Circuit Judge for the Eighth Circuit, and James Edward Gritzner has been nominated to serve as a U.S. District Judge for the Southern District of Iowa. These people are two very qualified people for Federal judgeship positions, and I am obviously proud to support their nominations, as I was involved with suggesting these people to the President of the United States.

Judge Melloy was born in Dubuque, Iowa, and married Jane Anne Knapp Melloy. She is a counselor in the Cedar Rapids schools. He graduated magna cum laude from Lorus College, and with high distinction from the University of Iowa College of Law. Before he attended law school, Judge Melloy served in the United States Army.

Upon graduation from law school, Judge Melloy gained extensive experience in civil litigation when he joined the Dubuque law firm of O'Connor, Thomas, Wright, Hammer, Bertsch and Norby, where he eventually became a partner and shareholder. In 1986, Judge Melloy was appointed United States Bankruptcy Judge for the Northern District of Iowa.

In 1992, Judge Melloy was appointed to the United States District Court for the Northern District of Iowa by President George Bush, Sr. In this position, Judge Melloy has presided over a wide variety of criminal and civil cases. He also has served on a number

of committees, including the Eighth Circuit Judicial Council, the Gender Fairness Task Force of the Eighth Circuit, and the Eighth Circuit Pattern Jury Instruction Committee. Judge Melloy also currently chairs the Bankruptcy Administration Committee of the Judicial Conference.

Judge Melloy is accompanied today, I am told, by his family, including his wife, Jane Anne; one of his daughters, Bridget; and his sister, Colleen George. I am sure that they are all very proud of the advancement that their family member is making in the profession of law.

I would go to Jim Gritzner now, who was born in Charles City, Iowa, and is married to Zoe Ann Gritzner, who is here today to support her husband's nomination to the District Court for the Southern District of Iowa.

He received a B.A. degree in 1969 from Dakota Wesleyan, a Master of Arts degree in 1974 from the University of Northern Iowa, and a law degree in 1979 from Drake University Law School. While he was in law school, Jim Gritzner worked as a law school for a Magistrate Judge with the U.S. District Court for the Southern District of Iowa.

Upon graduation from law school, Jim Gritzner worked as an associate attorney for the Waterloo law firm of Mosier, Thomas, Beatty, Dutton, Braun and Staack from 1979 to 1981. After that, he held a brief position as partner of a law firm that he co-founded, Humphrey, Haas and Gritzner, in Des Moines. In 1982, he joined the Des Moines law firm of Nyemaster, Goode, Voigts, West, Hansell and O'Brien as an associate attorney, and from 1986 to the present has served as a shareholder.

In addition to his law practice, Mr. Gritzner has had a notable record of public record. In 1980, he was appointed by Governor Ray to be a member of the Iowa Board of Parole, where he served through 1982. From 1985 to 1990, he was primary prosecutor for the Committee on Professional Ethics and Conduct of the Iowa State Bar Association and the Client Security and Attorney Disciplinary Commission of the Iowa Supreme Court. Because of this work, Mr. Gritzner has been recognized as an authority on legal ethics in Iowa. He is often called upon to resolve ethical issues for other lawyers, and serves as an expert witness on professional responsibility.

Both Judge Melloy and Jim Gritzner have had distinguished legal careers and have shown tremendous dedication to public service. They will be a huge asset to the Eighth Circuit and to the Southern District of Iowa. I am confident that these men possess the skills, integrity, commitment, intellect, and temperament that we expect of all good judges. So it is with great respect and admiration that I recommend both of these highly qualified individuals to the Judiciary Committee for favorable consideration.

Thank you.

Senator CANTWELL. Thank you, Senator Grassley, and thank you for that timely entrance and jumping right into that. We appreciate it.

Senator Harkin is also joining us.

Senator Harkin, did you want to give comments on Judge Melloy and Mr. Gritzner?

**PRESENTATION OF MICHAEL MELLOY, NOMINEE TO BE CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT AND JAMES GRITZNER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA BY HON. TOM D. HARKIN, A U.S. SENATOR FROM THE STATE OF IOWA**

Senator HARKIN. Thank you, Madam Chairwoman, for holding this hearing, and I am pleased to be here with my Iowa colleague to introduce and give my support to Michael Melloy, who has been nominated to serve on the Eighth Circuit Court of Appeals, and to James Gritzner, nominated for the U.S. District Court for the Southern District of Iowa.

Senator Grassley went through all of their long resumes. I will not do that again, just to say that Michael Melloy has a long history in the law. He has a strong judicial background, serving as a Federal Judge in Iowa's Northern District since 1992, and before that serving on the U.S. Bankruptcy Court, and also as a private lawyer for 12 years in a law firm in Dubuque, Iowa, after graduating from the University of Iowa Law School. As I supported Michael Melloy's nomination in 1992 to the Federal bench, I support his nomination to the Eighth Circuit today.

Jim Gritzner also has had extensive trial experience working in private practice since graduating from Drake Law School in 1979. Most recently, he has been an attorney with the law firm of Nyemaster, Goode, Voigts, West, Hansell and O'Brien, in Des Moines, since 1982.

In addition, from 1985 to 1990, Jim Gritzner served as counsel to the Committee on Professional Ethics and Conduct of the Iowa State Bar Association, and counsel to the Client Security and Attorney Disciplinary Commission of the Iowa Supreme Court.

Again, I thank you, Madam Chair, for holding these hearings. I recommend these two fine individuals, but, Madam Chair, I am going to take 60 seconds. I don't get up here before this committee very often.

Something just happened in Iowa, and Judge Melloy was the judge on this case. There was an editorial in the paper: "What sort of country would put a man in Federal prison for 15 years for possessing a single .22 caliber bullet? Ours would."

And it did, in one of the most bizarre applications of the Federal Sentencing Guidelines. Here was a man, 38 years old. His former girlfriend had claimed that he had stolen some stuff from her. The police got a search warrant and went and searched his place and found one .22 caliber bullet in his apartment.

Because he had a previous conviction for theft, not armed robbery—he never had a gun, never had a gun—they put in the form and it spit out and he got 15 years for possessing one .22 caliber bullet. That came before Judge Melloy.

Well, Madam Chair, I voted for the Sentencing Guidelines. I was wrong. I think it has turned into a nightmare. I think once again we have got to give judges the right to judge or take the name away from them, don't call them judges any longer. If we are going to have someone be a judge—these two gentlemen before you from Iowa I can say have the experience and the ability to judge, but because of the Sentencing Guidelines a lot of times their hands are tied.

Just think about that. Fifteen years. He possessed one .22 caliber bullet and that is all.

Thank you very much, Madam Chair.

Senator CANTWELL. Thank you, Senator Harkin, for being here and for your comments. I know that perhaps we will get into that in some of the questions the committee is going to ask.

I know that we have such a distinguished group here, more than we usually have at our hearings, so thank you for being here. I don't know if you have worked out with each other the order of process here. I know that it would be somewhat cohesive to have Mr. Leach go next, if possible, just to get the Iowa judges out of the way. If my colleagues would agree to that, then we could proceed to the Louisiana nomination and then right on down the line, if that is acceptable to people.

Given that, Congressman Leach, it is a pleasure to have you over here in the Senate, if you would like to give comments on the two nominees from Iowa.

**PRESENTATION OF MICHAEL MELLOY, NOMINEE TO BE CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT AND JAMES GRITZNER, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA BY HON. JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Representative LEACH. Thank you, Madam Chair, and I apologize to my senior colleagues from this body. I will be very brief.

One, I want to express my great admiration for Senator Grassley for taking such a heavy responsibility, in particular, for these judgeships and having put forth two sterling individuals.

I also want to express my appreciation to Senator Harkin for his endorsement of both of these judges, and we all know the Senate process is it is helpful to have Senators from both parties supportive, and that is the case.

With Judge Melloy, who is a constituent, you have an individual who has the strong support of his community, the strong support of his profession, and is a man that has embellished the Federal court in two different instances, and I am sure will ennoble it further with his elevation to a superior court.

With Judge Gritzner, you have an individual who is not a constituent, but as a small State we know of reputations, and to bring forth an individual with such a background in ethics and, I might say, arts and culture, I think is very relevant to the judiciary. The State of Iowa is exceptionally proud of both of these nominations.

I thank you, Madam Chair.

Senator CANTWELL. Thank you.

We will now go to Senator Breaux, from Louisiana, for his comments.

**PRESENTATION OF JAY ZAINY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA BY HON. JOHN B. BREAU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator BREAU. Thank you, Madam Chair and members of the committee, for allowing us to be on what must be the most exciting

part of this program today to listen to us talk about our constituents, but I think it is very important.

The comment has been made that it is good when you have bipartisan support. Jay Zainey, who is nominated to be a Federal district judge for Louisiana, has bipartisan support. We are Democrats; he is a Republican. He has bi-gender support. Mary and I are both pleased to be here.

I would just say all of these nominees have gone to the right schools and made good grades and wrote good articles, but I think—and I have said this many times before in representing candidates from Louisiana—particularly for the Federal district court, you want people who know people because the district court is the people's court. They try cases. People come before them who are lawyers and people who have been aggrieved and been charged, and you have to understand people.

There is a role for philosophers and professors and teachers of law, but particularly on the district court there is a role for people who practice law. Jay Zainey is a single practitioner in New Orleans who runs a general practice of civil and criminal and bankruptcy and everything that you would expect. I mean, he has seen it all. Those are the types of additional qualifications that I think are unique and important to the Federal district court.

I would just point out one other thing. He has used his time both as a member of the bar and in civic activities in some very important ways that I just would share just for a moment.

He was president of the Louisiana State Bar Association and inaugurated a community action committee, probably the first in the Nation, where the bar association had a committee to help carry out charitable projects, to say, look, we ought to give something back. The State Bar Association, under his leadership, initiated that community action committee.

Also, he established a special committee to devote to the task of providing legal services for the disabled and, in fact, has been honored by the bar association and by the Legal Services Project Director's Award for his dedication to the provision of legal services to disadvantaged Louisianians. He also served on the board of directors for the Advocacy Center for the Disabled and Elderly.

This is a person who is a totally committed citizen, in addition to being a fine attorney and outstanding lawyer, with all the experience and education that I think will make him an outstanding Federal district judge.

Thank you.

Senator CANTWELL. Thank you, Senator Breaux.  
Senator Landrieu?

**PRESENTATION OF JAY ZAINY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA BY HON. MARY L. LANDRIEU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator LANDRIEU. Thank you, Madam Chair. Let me just join my colleague, Senator Breaux, in giving my hearty congratulations to Jay Zainey for being nominated, and to acknowledge his presence and the presence of his wife, Joy, and his daughter, Margaret,

who is here with us, and to commend the President for nominating such an outstanding lawyer.

We have got many fine lawyers in our State, as every Senator could claim. But as Senator Breaux has mentioned, not only has Jay distinguished himself through his academic career, but really in a leadership position initiating things that never were before and creating them.

Out of his own personal experience with a child he and his wife have who is specially challenged, he took that personal experience and turned it into something that has been of tremendous service to thousands of families in Louisiana who are challenged by raising a disabled child or having someone in their family that has those special challenges. I think that is the kind of leadership we want on the Federal bench.

The only thing I will say is particularly at this time in our history, our Federal bench serves as a powerful tool for the powerless. It serves as a source of pride for all Americans, and at this particular time a beacon of hope for the world. I think Jay will bring more than honor and judgment to that bench and he has my hearty congratulations.

Senator CANTWELL. Well, I want to thank the two Senators from Louisiana for showing up.

For all the nominees, the Senators who have come to speak on your behalf have very busy schedules, and to come with such enthusiasm shows a great deal of interest in making sure that your nominations go through smoothly. So thank you.

Well, let's turn to Senator Campbell.

**PRESENTATION OF ROBERT BLACKBURN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO BY HON. BEN NIGHTHORSE CAMPBELL, A U.S. SENATOR FROM THE STATE OF COLORADO**

Senator CAMPBELL. Thank you, Madam Chairman. I was interested in Senator Breaux's comments about the type of people we look for for the Federal district court, and I certainly agree with him that we need people that have a good, strong law background, but are also involved in the community and have common sense. Certainly, our candidate from Colorado falls in that category. In fact, he has even been known to ride a motorcycle or two.

Senator CANTWELL. Is that the common sense part? [Laughter.]

Senator CAMPBELL. Absolutely, absolutely.

It is certainly an honor and a pleasure to introduce to the committee today what I consider a tremendous legal mind from the State of Colorado and an outstanding citizen from our State, Judge Robert Blackburn, who is here with his family.

Judge Blackburn has been practicing law in Colorado now for more than a quarter of a century and has handled all types of cases. He has represented school districts, boards of county commissioners, departments of social services, banks, corporations, public officials, and private citizens in all kinds of legal contexts. I firmly believe that he is overwhelmingly qualified and definitely is the right person for this job.

Over a year ago, Senator Allard and I set up a review panel made up of a cross-section of people from the legal profession in



Colorado to help us, you might say screen, to find out who we should recommend to the President for this post. Judge Blackburn came out very high, if not on top, of literally every person in that panel's recommendations.

For the past 12½ years, Judge Blackburn has served as a district judge for the 16th Judicial District in Colorado. He has a long and proven record of working hard on behalf of our people. Throughout his legal career, he has been tough but fair, and prepared and engaged in his work, and I think that qualifies him as a definite asset to the judicial system. Those qualities are important characteristics that have undoubtedly served him well and will, no doubt, do so in the future.

I know we have to bounce around from person to person. There are a lot of eminently qualified people today, but I certainly am looking forward to seeing him serve on the bench.

Thank you, Madam Chairman.

Senator CANTWELL. Senator Campbell, thank you for your remarks.

Senator Allard.

**PRESENTATION OF ROBERT BLACKBURN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO BY HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF COLORADO**

Senator ALLARD. Madam Chairman, thank you very much. I consider it an honor and a privilege to come before you with my colleague, Senator Ben Nighthorse Campbell, to introduce the Honorable Robert E. Blackburn, a person who I believe has considerable integrity and true intellect.

Judge Blackburn has been nominated by President Bush for a Federal judgeship in the United States District Court for the District of Colorado, and I urge the committee's acceptance of his nomination.

Madam Chairman, I have before me a letter here from the chief judge of the district court talking about Judge Blackburn. He says, "I know Judge Blackburn and I believe him to be well qualified."

I just would want to also point out to the committee that the District of Colorado struggles to do the work of a demonstrated need of 9 active judges with only 4 active judges. So I really appreciate your moving forward with this confirmation because it is badly needed in that particular district.

Judge Robert E. Blackburn knows the law and he knows Colorado. He graduated from the University of Colorado School of Law in 1974 and received his undergraduate degree from Western State College. His roots go deep in Colorado. He was raised on a farm in the proud community of Las Animas, Colorado. I feel that that keeps one foot in the real world while he is serving on the bench.

He has practiced law as an attorney and judge for over two decades. He comes before the committee today from State district court, a post he has held since 1988. Previously, Mr. Blackburn served as a deputy district attorney, Bent County Attorney, and then municipal judge and city attorney. In addition to that, he has extensive experience as a business owner. I think that is an impor-

tant talent that will serve him well with the multiple demands of the Federal bench.

Judge Blackburn has the support of many people, as well, and I would just reiterate what Senator Campbell said that we had a committee of well-qualified, respected attorneys in Colorado help us with the selection process and I think they did a very good job. As a result of that, Judge Blackburn has the support of many people in Colorado.

An editorial in the Denver Post, upon hearing of Judge Blackburn's nomination, proclaimed, "We are delighted by the White House decision." The column went on to praise the extensive experience of the judge, as well as his solid knowledge of the law and reputation for fairness.

The Denver Post also noted in their editorial of support that he is widely respected by other judges and by lawyers who have appeared before him. The Denver Post urged the Senate Judiciary Committee to exercise all reasonable speed with the Blackburn nomination, saying, and I quote, "The long overworked federal court of Colorado needs qualified new judges, and it needs them now."

In summary, I think Judge Blackburn is a highly qualified candidate and, in the words of the Post, "eminently qualified." A substantial majority of the American Bar Association Standing Committee on the Federal Judiciary found, as a result of an extensive investigation, that the Honorable Robert E. Blackburn is well qualified for appointment as Judge of the United States District Court for the District of Colorado.

Thank you again. I urge the committee's acceptance of Judge Blackburn's nomination.

Senator CANTWELL. Thank you. Senator Allard and Senator Campbell, thank you very much for coming and giving your remarks on Judge Blackburn, from Colorado. We appreciate you being here.

We are going to turn now to Senator Kyl for his comments on Judge Cindy Jorgenson.

Senator KYL. Madam Chairman, why don't I defer to Representative Norton, since I am going to be on the panel throughout the afternoon.

Senator CANTWELL. We appreciate that.

Representative Norton, would you like to give comments on the District of Columbia nominee, Richard Leon?

**PRESENTATION OF RICHARD LEON, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA BY HON. ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Representative NORTON. Well, the Senator is very generous and I appreciate it.

Madam Chair, I appreciate the opportunity to come before you to recommend Richard Leon for the District Court here in the District of Columbia. As you are aware, the District does not have Senators, but the President has agreed to consult with me, as he does with members of this body, on nominees to our district court. I am grati-

fied that he has kindly agreed to do that, and I am gratified that the Chair of this committee has also agreed to do so.

My good colleague to my right, Mr. Leach, has authorized me to say that he too knows Richard Leon and he thinks highly of him, and wants me to say that he recommends him. So although there are not a lot of Republicans in the District of Columbia, I can say that Mr. Leon has bipartisan support as well. [Laughter.]

I am sure that my Republican constituents would be as happy as I am with this nominee. I had the opportunity to interview him and to look into his background. I consider Mr. Leon very well qualified for the Federal bench.

He has had a classic career of good preparation for the Federal bench: his work in the U.S. Attorney's Office for the Southern District of New York; his work in the Criminal Division at the Department of Justice, where he was recognized for his outstanding legal work; his work as a Deputy Attorney General in the Department's Environment and Resources Division; and, of course, his work with House investigations, where Mr. Leach got to see him and know him.

Now, Mr. Leon has brought his career, civil and criminal litigation experience to private practice here in the District of Columbia, where he is lead counsel in complex civil and criminal cases. In addition, he has been an adjunct professor of law at Georgetown Law School, and has been active in the D.C. Bar Association.

There is no doubt in my mind that, by background and experience, Richard Leon is well qualified for the U.S. district court here and I am pleased to recommend him highly to you.

Senator CANTWELL. Thank you, Representative Norton, for those comments.

Again, I thank the panel for being here today and giving time out of their schedule to speak positively about these nominees.

Senator KYL, did you want to take an opportunity now?

**PRESENTATION OF CINDY JORGENSEN, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA BY HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA**

Senator KYL. Thank you, Madam Chairman. Yes, now I can truly say we will save the best until last. I can brag about my nominee that way.

Cindy Jorgenson is a judge on the Pima County Superior Court bench and is one of two nominees of the President. I hope the other will soon be before the committee, as well, because they are in the division of the district court that is the second busiest in terms of criminal felony filings or caseload, the second busiest out of the 94 district courts or divisions in the entire United States. This is a court that needs the help and, as a sitting judge, Cindy Jorgenson will be able to hit the deck running, as it were.

She also is distinguished by the fact that she graduated from the University of Arizona both in her undergraduate and her law school career, exactly the same path that I followed, I might add, quite a few years before Judge Jorgenson.

She is currently the presiding judge on the family law bench. She served as a prosecutor in the Pima County Attorney's office. She supervised felony sex crimes and child abuse prosecutions. Until

her appointment to the bench, she was employed by the Department of Justice as an Assistant United States Attorney. She worked in both the Criminal and the Civil Divisions there, so she has both the civil and the criminal experience.

She was assigned to a variety of cases, including Native American and immigration matters, drug cases, civil medical malpractice, civil forfeiture, all the kinds of cases that would come before her as a sitting judge. She has also represented the United States in several appellate cases before the Ninth Circuit Court of Appeals.

Madam Chairman, to save time I won't go through her professional activities and honors, except for a couple. Suffice it to say they are numerous. She has served on a variety of different commissions. She received the governor's recognition for work on jury reform. She has been awarded the United States Department of Justice Special Achievement Award in four different years, and has received other commendations.

She is very well qualified. I am delighted that the President has nominated her and I am confident the committee will find her equally as qualified.

Senator CANTWELL. Thank you, Senator Kyl, for those comments.

We are going to move now to the nominees. We are about ready to move to having Mr. Melloy be sworn in for his oath, but since the chairman of the committee is here, Senator Leahy, I don't know if you wanted to take an opportunity to give comments on these nominees or this hearing today.

Chairman LEAHY. Only this, Madam Chair: I wanted to thank you and Senator Grassley and Senator Kyl for taking the time. In constantly trying to move things as quickly as we do, it means that we have hearings at times when normally we don't. I don't know that we have ever had a hearing in the first week back, and the reason that we are able to do it is the three of you are willing to take the time to make it possible, but especially you, Senator Cantwell.

I just wanted to come over and welcome the nominees. I know you have all worked not only with the White House, but with the Senators from your home States, and it is good to have you here.

That is all I have to say.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF SENATOR PATRICK LEAHY, CHAIRMAN, SENATE JUDICIARY COMMITTEE

I thank Senator Cantwell for chairing this important hearing and also thank all of the nominees and their Senators and Representatives for arranging to appear today.

This is the second day of this session of Congress and we are proceeding with our first confirmation hearing for judicial nominees. Last year I announced our first judicial nominations hearing within 10 minutes of the Senate reorganization last summer. We held that first hearing last session on the day after Committee Members were assigned. In fact, in the last five months of last year we held 11 hearings involving judicial nominees. That is more hearings involving judicial nominees than were held in all of 1996, 1997, 1999 or 2000 and hearings at a more rapid pace than in either 1995 or 1998. Unlike the preceding six and one-half years in which no hearings were held in 30 months, since the Committee reorganized last summer, we have held at least one hearing for judicial nominees every month. In fact, we held two in July, two unprecedented hearings during last summer's August recess, two in December, and three in October.

In the last five months of last year, the Committee considered and reported favorably to the Senate 32 judicial nominations. We reported more judicial nominees after the August recess than in any of the preceding six years and more than in any similar period over the preceding six and one-half years. And last year was no ordinary year for the country or the Senate. Nonetheless, the Committee worked hard to make progress with judicial nominations, and I extend my thanks to all Senators who helped in those efforts and assisted in the work that it takes to consider the scores of nominations that we did in the last five months of last year.

One of the reasons that the Senate was able to confirm 28 judges in the last five months of the last session was because they were strongly supported as consensus nominees by people from across the political and legal spectrums. In the last five months of last year, not only did the Senate confirm almost twice as many judges as were confirmed in the first year of the George H.W. Bush Administration; we confirmed more judges, including twice as many judges to the Courts of Appeals, as in the first year of the Clinton Administration.

Our hard work led to some success. By the time the Committee was organized and beginning its work last summer, the vacancies on the federal courts were peaking at 111. The Committee has begun the process of lowering the vacancies on our federal courts. Since I became Chairman, 25 additional vacancies have arisen. Through our work in the last five months of last year we were able to outpace this high level of attrition. By contrast, when Republicans took charge of the Senate in January 1995 until the majority shifted in the summer of 2001, federal judicial vacancies rose from 65 to more than 100, an increase of almost 60 percent.

In spite of our short year, the need to focus our attention on responsible action in the fight against international terrorism; the threats and dislocation of the anthrax attacks; the long overdue oversight of the FBI; the need to overcome a partisan filibuster that prevented action on the measure that funds our nation's foreign policy initiatives and provides funds to help build the international coalition against terrorism; and the partisan efforts to delay the organization and then the reorganization of the Senate, we persevered and attended to the work of the Committee.

A good part of that work can be found in the 16 confirmation hearings in the last five months of last year for Executive Branch nominees; the confirmations of 77 senior Executive branch officials including the Director of the FBI, the head of the DEA, the Commissioner of INS, the Director of U.S. Marshals, the Associate Attorney General, the Director of ONDCP, the Director of PTO, seven Assistants Attorney General and 59 U.S. attorneys. I regret that the White House did not begin sending U.S. marshal nominations until very late in the session, and that more U.S. Attorneys and U.S. marshals were not available to be considered.

I recall soon after Judge Gregory's confirmation last July that the White House Counsel said in a public interview that he did not expect the Senate to confirm more than five judges before the end of 2001. We reached that mark by September, when the Senate confirmed Judge Prost, our third Court of Appeals confirmation in two months. We went on to confirm more than five times the number predicted by the White House Counsel in just five months.

One might have thought from the constant barrage of partisan criticism that 2001 resembled 1996, a year in which a Republican Senate majority confirmed only 17 judges, none of which were confirmed to the Courts of Appeals. The fact is that the Senate can be proud of its achievements during the final months of 2001.

I had hoped that more Senators would recognize what we were able to accomplish and consider our record in historical context. I have yet to hear any Republican concede any shortcomings in the practices they employed over the previous six and one-half years. Since that change in majority last summer, we have been exceeding the pace and productivity that they had maintained. If their efforts were acceptable or as praiseworthy as some would argue, I would expect them to acknowledge that our efforts are also to be commended. If they did things they now regret, their admissions would go far to helping establish a common basis of understanding and comparison. Taking that step would be a significant gesture, one that has not yet occurred.

We know that our work has not been completed. There are still far too many judicial vacancies that we must work together to fill. We begin this session with our first Committee activity being a judicial nominations hearing, our twelfth since the change in majority last summer. We will continue our work to keep the confirmation numbers and the vacancy numbers both moving in the right directions.

At the end of 1999, Chief Justice Rehnquist was encouraged when only 34 judges were confirmed all year and 35 were left pending. Similarly, at the end of 2000, the Chief Justice commended the Senate for confirming 39 judges all year, a year in which 41 judicial nominations were returned to the President without Senate action. Last year, we were able to confirm 28 judges in only five months and the Committee

reported four additional nominees to the Senate for final action from the 65 Court of Appeals and District Court nominations sent to the Senate during the course of the year.

More than two-thirds of last year's vacancies and this year's continue to be on our federal trial courts. The Administration has been slow to make nominations to the vacancies on the federal trial courts. In the last five months of last year, the Senate confirmed 22 of the 37 District Court nominees it received. That is a higher percentage of the President's trial court nominees than the prior Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democrat President. Unfortunately, we ended last year without a nominee for 55 of the current 69 District Court vacancies; i.e., almost 80 percent of the current trial court vacancies had no nominations for the Senate to consider. The White House nominated only one District Court nominee in the last two months of last year.

This session we have received nominations for two dozen of the four and one-half dozen District Court vacancies that were without a nominee. That is a start. Unfortunately, last year the White House also acted unilaterally to change the practice of nine Republican and Democratic Presidents to allow the ABA to begin its peer reviews during the selection process. Those professional peer reviews for judicial nominees cannot even begin now until after the nomination and may take several months to complete. The ABA peer reviews on the nominations being made this week, for example, are not likely to become available until late March or April. If the nominees have the support of their home State Senators, and after the Committee has received ABA peer reviews, these nominees will then be eligible to be included in Committee hearings, but not until sometime this spring. And even then, over two dozen of the current federal trial court vacancies, 31, almost half of all current federal trial court vacancies, will still be without eligible nominees.

To make real progress will take the cooperation of the White House. The most progress filling judicial vacancies can be made most quickly if the White House would begin working with home State Senators to identify fair-minded, non-ideologue, consensus nominees. One of the reasons that the Senate was able to confirm 28 judges in the last five months of the last session was because they were strongly supported as consensus nominees by people from across the political and legal spectrums. In the last five months of last year, not only did the Senate confirm almost twice as many judges as were confirmed in the first year of the first George H.W. Bush Administration and more judges, including twice as many judges to the Court of Appeals as in the first year of the Clinton Administration, but the Committee held more hearing for more nominees and favorably reported more nominees after the August recess than in any of the preceding six years of Republican control.

I will continue my effort to work with all Senators to schedule nominations for hearings considering a number of actors, including the consensus of support for the nominee, the needs of the court to which the person is nominated, the interests of the home state Senators, and the work load and legislative schedule of the Committee. We have a number of persisting vacancies that should have been filled by qualified candidates nominated from 1995 through 2000. Over the six and one-half years that preceded the Democratic Senate majority, a total of only 46 judges were confirmed to fill vacancies on the Courts of Appeals, an average of approximately seven a year. This has resulted in multiple vacancies in a number of Circuits. There are many problems that have grown and even festered over time and they cannot all be remedied immediately. In the last five months of last year, the Senate proceeded to confirm six Court of Appeals judges. Indeed, last year the Senate confirmed the first new member of the 5th Circuit in seven years, the first new judge to the 4th Circuit in three years, and the first new judge to the 10th Circuit in six years.

I again urge the White House to redouble its efforts to work with home state Senators from both parties, Democratic Senators as well as Republican Senators. I urge the White House, as I have for years, to work with home State Senators of both parties to identify, select and nominate strong, consensus, fair nominees for these important vacancies. Today we demonstrate, again, that consensus nominees with widespread and bipartisan support are more easily and more quickly considered by the Committee.

As some indication of the bipartisan manner in which we proceeded last year, I note that the Senate confirmed 11 nominees from States with two Republican Senators, nine from States with a Democratic Senator and a Republican Senator, five from States with two Democratic Senators, and three for courts in the District of Columbia which is without Senate representation. That is a decidedly bipartisan record. Today's group of nominees reflects that bipartisanship as well. Two are from States with two Republican Senators, two are from a State with a Democratic Sen-

ator and a Republican Senator, one is from a State with two Democratic Senators, and one is for a vacancy in the District of Columbia.

Last year, the Senate acted promptly to confirm all of the judges in an average of fewer than 60 days from the time we received a peer review from the ABA. This stands in sharp contrast to recent years in which the average time for consideration had risen to historic levels, about 200 days from nomination to confirmation and more than a year on average for the few lucky Court of Appeals judges to be considered.

We have also completed work on a number of judicial nominations in a more open manner than ever before. For the first time, this Committee is making public the "blue slips" sent to home State Senators. Until my chairmanship, these matters were treated as confidential materials and restricted from public view. We have moved nominees with less time from hearings to the Committee's business meeting agenda, and then out to the floor, where nominees have received timely roll call votes and confirmations. Over the preceding six and one-half years, at least eight judicial nominees who completed a confirmation hearing were never considered by the Committee and simply left without action. Additionally, the past practices of extended unexplained anonymous holds on nominees after a hearing were not as evident in the last five months of last year as they were in the past.

Throughout last year, in particular, in the wake of the terrorist attacks on September 11, some of us have been seeking to join together in a bipartisan effort in the best interests of the country. For those on the Committee who helped in those efforts and assisted in the hard work of reviewing and considering the scores of nominations the Committee reported in the last five months of last year, I commend them. As we demonstrated last year and again today at this hearing, we are moving ahead to fill judicial vacancies and consider nominees with strong bipartisan support.

Senator KYL. Madam Chairman.

Senator CANTWELL. Yes, Senator Kyl.

Senator KYL. While the chairman is still here, I thank him, as well, for helping to fill the vacancies on this very busy court. Senator Leahy, I mentioned just before your arrival, the second busiest in the country.

Also, I had forgotten to mention that Senator McCain, from Arizona, is also very supportive of Judge Jorgenson's nomination and regretted that he couldn't be here at the hearing, but wanted me to be sure and make that point for the record.

Chairman LEAHY. Thank you.

Of course, Senator Grassley has talked to me about this agenda on numerous occasions before now and I was delighted we were able to—I wish we could have worked out his nominees before we recessed, but I am glad we are able to do it now.

Senator GRASSLEY. Madam Chairman?

Senator CANTWELL. Yes, Senator Grassley?

Senator GRASSLEY. Two things. I would like unanimous consent to put a statement on these judges in from Senator Hatch.

Senator CANTWELL. Without objection.

[The prepared statement of Senator Hatch follows:]

#### STATEMENT OF SENATOR ORRIN G. HATCH, RANKING REPUBLICAN MEMBER

I am pleased that we are considering today the nominations of six exceedingly well qualified candidates for the federal bench. The convention of this hearing on the first full day of the new congressional session is a step in the right direction. Moreover, our consideration of six judges at this hearing represents the most judges we have considered at a single confirmation hearing during this Congress, which is another positive step.

I sincerely hope that we maintain this pace at future hearings, because we have plenty of work to do. There are 101 vacancies in the federal judiciary, a vacancy rate of nearly 12%. Yesterday, the White House submitted 24 new nominations to the Senate for confirmation. Since we have 38 nominees still pending from last session, we now have a total of 62 nominees awaiting action from the Senate.

In 1994, the second year of President Clinton's first term, the Senate confirmed 100 judicial nominees. I am confident that Republicans and Democrats can work together to achieve, or even hopefully exceed, this number in 2002, particularly the many circuit court nominees that are pending to fill emergency vacancies in appellate courts around the country. To do this, however, we must keep up the pace of hearings and confirmation votes so that we do not fall further behind in filling the vacancies that plague our federal judiciary. I look forward to working with my Democratic colleagues to accomplish this goal.

As I stated earlier, today's hearing is a step in the right direction. We have the privilege of considering six outstanding lawyers to be federal judges. Our only circuit nominee on the agenda is Michael Melloy, who has been nominated to be a judge on the U.S. Court of Appeals for the Eighth Circuit. Judge Melloy has already sat by designation on the Eighth Circuit in his present capacity as a federal district court judge in Iowa, so he comes to this hearing with more than a passing familiarity of what his future role will require.

Robert Blackburn has been nominated to be a District Court Judge for the District of Colorado, and he will bring a great deal of legal experience to the Federal bench. Judge Blackburn has practiced law for 13 years in private practice, served as a Deputy District Attorney for 6 years, as a County Attorney for 8 years, as a Municipal Judge for 3 years, and as a state court judge since 1988.

Our next nominee is James Gritzner, who has been nominated to the District Court for the Southern District of Iowa. Although Mr. Gritzner began his legal career in a general litigation practice, it really exploded—so to speak—when he began specializing in cases concerning catastrophic fires and explosions. From his office in Des Moines, he has handled such cases in 23 states and, in the process, developed a national reputation. He is also known as an expert in legal ethics, having prosecuted over 100 attorney disciplinary cases before the Grievance Commission of the Iowa Supreme Court.

Next, Cindy Jorgenson is the nominee for the District of Arizona. Judge Jorgenson's legal experience includes serving as a deputy county attorney, an Assistant U.S. Attorney, and as a Superior Court Judge—all in the State of Arizona. She supervised the felony sex crimes and child abuse prosecution unit in Pima County for several years. Then, as an Assistant U.S. Attorney handled both criminal and civil cases. Since 1996, Judge Jorgenson has served with great distinction on the state trial court bench in Tucson, Arizona.

Richard Leon has been nominated to be a district judge in the District of Columbia. Mr. Leon has had a remarkable career that has spanned both public service and private practice. He has served as a judicial law clerk, as counsel to U.S. House committees and task forces, and as a Deputy Assistant Attorney General at the U.S. Department of Justice. Despite the present demands of his private practice, he teaches a class on congressional investigations right up the street at Georgetown University Law Center.

Jay Zainey is today's nominee for the district court in the Eastern District of Louisiana. Mr. Zainey has maintained a successful private practice and has garnered the respect of his colleagues, as reflected in his election as President of the Louisiana State Bar Association. One remarkable achievement during his tenure as president was the creation of the first state bar committee in the nation to provide legal referral services for the disabled.

I welcome each of our nominees to the Committee this afternoon, and commend the President on his choices for the federal judiciary. I look forward to working with my Democratic colleagues to ensure your swift confirmation.

Senator GRASSLEY. And then could I also thank Senator Leahy, just so people know that when a Senator says they are going to do something, they do it. Senator Leahy told me before the holidays that the first hearing we had in the new year, Jim Gritzner and Judge Melloy would be on the agenda. I thank you very much for delivering.

Thank you very much.

Chairman LEAHY. We tried to do it within 24 hours of coming in. We almost made that 24 hours. I think it was like 26 hours of coming into session.

Senator GRASSLEY. Thank you.

Senator CANTWELL. Well, I am sure Mr. Melloy would, even at 26 hours, like to come forward now.



Before you sit down, if you could raise your right hand, do you swear that the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge MELLOY. I do.

Senator CANTWELL. Thank you. Welcome to the committee, Mr. Melloy.

**STATEMENT OF MICHAEL MELLOY, OF IOWA, NOMINEE TO BE  
CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT**

Judge MELLOY. Thank you, Senator.

Senator CANTWELL. If you would like to introduce your family that is here, this is an appropriate time.

Judge MELLOY. I would, and I would like to first thank you, Senator Cantwell, for taking the time to chair this hearing and Senator Leahy for scheduling the hearing.

I have with me my wife, Jane Anne, and my daughter, Bridget. Our two oldest daughters—Jennifer, who is working in Paris at this time, could not come, and my second daughter, Kate, just started a new job last week and didn't think she could ask for time off the first week of her employment, and so she couldn't make it either. I also have my sister, Colleen George, here, and her husband, David, and their two daughters, Anne and Sarah.

I also have a lot of friends here, and I am not sure who all is back there, but I just want to recognize Dan McDermott, who has been a good friend. I know others who have come in. Members of the Administrative Office of the U.S. Courts who I have worked with are here. Frank Sabak, Ralph Avery, Bill Rule, Kevin Gallagher, Mark Evans are all here, and I very much appreciate their attendance and their support.

Senator CANTWELL. If you would like to make an opening statement?

Judge MELLOY. I don't have any opening statement other than to again extend my appreciation for the opportunity to appear before you.

[The biographical information of Judge Melloy follows:]

UNITED STATES SENATE  
Committee on the Judiciary

QUESTIONNAIRE FOR JUDICIAL NOMINEES

1. Full name (include any former names used.)

Michael Joseph Melloy

2. Address: (List current place of residence and office addresses).

Office: P.O. Box 74410  
304 Federal Building and Courthouse  
Cedar Rapids, Iowa 52407

Residence: Cedar Rapids, Iowa

3. Date and place of birth.

January 15, 1948  
Dubuque, Iowa

4. Marital Status (include maiden name of wife, or husband's name). (List spouse's occupation, employer's name and business addresses).

Married to Jane Anne Knapp Melloy. She is employed as a school counselor at Erskine School, 600 36<sup>th</sup> St. S.E., Cedar Rapids, Iowa. Her employer is the Cedar Rapids Community School District, 346 2<sup>nd</sup> Avenue S.W., Cedar Rapids, Iowa 52404.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Loras College, Dubuque, Iowa. September, 1966 - June, 1970. Received a B.A. Degree, Magna Cum Laude, June, 1970.

University of Iowa College of Law, Iowa City, Iowa. June, 1972 - August, 1974. Received a J.D. Degree with high distinction in August, 1974.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you

were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Upon graduation from college, I entered the United States Army. I served in the U.S. Army from June, 1970, until January, 1972. After discharge from the Army, I worked for Eagle Food Stores for a few months in 1972. I left that employment when I started law school in June, 1972.

During law school, I clerked for the Jo Daviess County, Illinois, State Attorney's office during the summer of 1973.

Upon graduation from law school in August, 1974, I joined the firm of O'Connor, Thomas, Wright, Hammer, Bertsch & Norby, Dubuque, Iowa. I became a partner in that firm and later a shareholder when the firm incorporated under the name of O'Connor & Thomas, P.C. I remained with that firm until my appointment as United States Bankruptcy Judge. I was associated with my former firm from August, 1974, to January, 1986.

I taught one night school class at Loras College, Dubuque, Iowa, during the 1979-1980 school year. I taught Principles of Economics.

In January 1986, I was appointed United States Bankruptcy Judge for the Northern District of Iowa.

August 1992, to date, United States District Court Judge for the Northern District of Iowa.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

June 15, 1970-January 6, 1972. U.S. Army. Specialist 5th Class. Serial No. 485601382. I was discharged from active duty on January 6, 1972. I was placed in the inactive reserve until June 14, 1976. I completed my inactive reserve obligation without being recalled to active duty and received an honorable discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I graduated from college Magna Cum Laude, and was named the outstanding economics student in my graduating class. I graduated from law school with high distinction.

9. Bar Associations: List all bar associations, legal or judicial related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I currently am or have been a member of the following bar associations and professional organizations: American Bar Association, Iowa State Bar Association, Illinois State Bar Association, Dubuque County Bar Association, Linn County Bar Association, Commercial Law League of America, Dean Mason L. Ladd Inn of Court, National Conference of Bankruptcy Judges, and Federal Judges Association.

As a Judge, I have twice served on the Eighth Circuit Judicial Council. I was elected by my fellow bankruptcy judges of the Eighth Circuit to be the bankruptcy judge representative on the Eighth Circuit Judicial Council. Subsequent to my appointment as United States District Court Judge, I became the Iowa district judge representative on the Judicial Council. I served on the bankruptcy and district judge subcommittees of the Judicial Council.

I currently chair the Bankruptcy Administration Committee of the Judicial Conference of the United States. I became a member of the Bankruptcy Administration Committee on November 1, 1997. I became chair of the Committee on November 1, 2000.

I was a member of the Gender Fairness Task Force of the Eighth Circuit. I did not hold an office on that Committee.

I am currently a member of the Eighth Circuit Pattern Jury Instruction Committee.

As a Judge, I have served as an ex-officio member of various committees of the Iowa State Bar Association. As a bankruptcy judge, I was a council member of the Bankruptcy and Commercial Law Section of the Iowa State Bar Association. I was also an ex-officio member of the Title Standards Committee. I am

currently an ex-officio member of the Federal Practice Committee of the Iowa State Bar Association.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organizations that are active in lobbying efforts other than the lobbying that may be done by the professional organizations listed in answer to question number 9. As Chair of the Bankruptcy Administration Committee, I have testified in front of Congress in support of the Judicial Conference position seeking authorization for additional bankruptcy judgeships.

I belong to the Cedar Rapids Downtown Rotary Club.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse in membership. Give the same information for administrative bodies which require special admission to practice.

Court:	Date
State of Iowa;	1974
U.S. District Court for the Northern District of Iowa;	1976
U.S. District Court for the Southern District of Iowa;	1976
State of Illinois;	1975
U.S. District Court for the Northern District of Illinois (also admitted to Northern District of Illinois trial bar).	1983

Upon taking office as U.S. Bankruptcy Judge for the Northern District of Iowa, I voluntarily placed my Illinois license on inactive status. I remain licensed to practice law in the State of Iowa.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were

press reports about the speech, and they are readily available to you, please supply them.

I have given no speeches on constitutional law or legal policy. All of my presentations have been to legal groups, mainly dealing with court administration and trial practice. I have attached a copy of an outline I have used in connection with presentations I have made to new bankruptcy judges on the topic of conducting jury trials. I am also attaching copies of the report of the Gender Fairness Task Force that I served on. I am forwarding one copy of the manuals on model civil and criminal jury instructions that were published by the 8<sup>th</sup> Circuit Pattern Jury Instruction Committee that I serve on.

- 13.. Health: What is the present state of your health? List the date of your last physical examination.

Very Good. May 2001.

14. Judicial office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed United States Bankruptcy Judge by the United States Court of Appeals for the Eighth Circuit. I held the position from January 30, 1986, to August 18, 1992.

The bankruptcy court is considered a unit of the U.S. District Court for the Northern District of Iowa. It has jurisdiction over all matters arising under or related to any bankruptcy case filed in the Northern District of Iowa. Jurisdiction of the bankruptcy court is conferred pursuant to 28 U.S.C. S 1334 and 28 U.S.C. S 157.

On August 18, 1992, I became a United States District Court Judge. I was appointed by President George Bush, and confirmed by the United States Senate. The United States District Court is a court of general jurisdiction. It handles all civil and criminal matters arising under or related to laws of the United States.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written;

1. Briehl v. General Motors Corp., 172 F.3d 623 (8<sup>th</sup> Cir. 1999).
2. Campos v. Ticketmaster Corp., 140 F.3d 1166 (8<sup>th</sup> Cir. 1998).
3. Hardin v. Hussmann Corp., 45 F.3d 262 (8<sup>th</sup> Cir. 1995).
4. Cunningham v. PFL Life Ins. Co., 42 F. Supp. 2d 872 (N.D. Iowa 1999).
5. U.S. v. Smith, 964 F. Supp. 286 (N.D. Iowa 1997).
6. U.S. v. Mercy Health Services, 902 F. Supp. 968 (N.D. Iowa 1995).
7. U.S. v. McDermott, 822 F. Supp. 562 (N.D. Iowa 1993).
8. Islami v. Covenant Medical Center, Inc., 822 F. Supp. 1361 (N.D. Iowa 1992).
9. In re Iowa Trust, 135 B.R. 615 (Bankr. N.D. Iowa 1992).
10. In re Waters, 90 B.R. 946 (Bankr. N.D. Iowa 1988).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

1. United States v. Wells, 519 U.S. 482, 117 S. Ct. 921 (1997). Sitting by Designation with the Eighth Circuit, I wrote a decision applying existing Eighth Circuit precedent to the issue of whether materiality of a false statement was an element of the of knowingly making a false statement to a federally insured bank 18 U.S.C. § 1014. That precedent was ultimately overruled by the United States Supreme Court in this case.
2. United States v. Kroeger, 229 F.3d 700 (8<sup>th</sup> Cir. 2000). This was a sentencing guideline dispute. The issue on appeal was not raised by the U.S. Probation Office or any party at the trial level. The government conceded on appeal that there had been an improper application of the environmental-harm enhancement.
3. United States v. Brooks, 215 F.3d 842 (8<sup>th</sup> Cir. 2000). I was reversed on a finding that the government conduct in this case constituted entrapment as a matter of law.

4. United States v. Imgrund, 208 F.3d 1070 (8<sup>th</sup> Cir. 2000). This is a sentencing guideline case. Between the date of sentencing and the issuance of the Imgrund decision, the Eighth Circuit issued a decision which became controlling precedent in the Imgrund case.
5. United States v. Hendricks, 171 F.3d 1184 (8<sup>th</sup> Cir. 1999). This case dealt with the issue of the proper term of supervised release to be applied in connection with a case in which the defendant qualified for the safety valve.
6. United States v. Weaver, 161 F.3d 528 (8<sup>th</sup> Cir. 1998). This case involved a typographical error in the presentence investigative report which required a remand for sentencing.
7. United States v. Madrid, 152 F.3d 1034 (8<sup>th</sup> Cir. 1998). This case dealt with a search and seizure issue. The Eighth Circuit remanded for a new trial.
8. Thorson v. Gemini, Inc., 123 F.3d 1140 (8<sup>th</sup> Cir. 1997). This case dealt with a new federal regulation which was promulgated after the issuance of my decision at the trial level. This was not a reversal as much as a remand for application of the new Department of Labor regulation.
9. United States v. Hogan, 121 F.3d 370 (8<sup>th</sup> Cir. 1997). This case dealt with application of the federal sentencing guidelines for the adjustment dealing with vulnerable victims.
10. Moschetti v. Chicago, Central & Pacific Railroad Company, 119 F.3d 707 (8<sup>th</sup> Cir. 1997). This case represented a reversal of a grant of summary judgment I gave in an employment discrimination case.
11. Estate of Gavin v. United States, 113 F.3d 802 (8<sup>th</sup> Cir. 1997). This was a partial affirmance and partial reversal dealing with special use valuation of farm real estate and income with respect to a decedent.
12. United States v. Kalb, 105 F.3d 426 (8<sup>th</sup> Cir. 1997). This is a sentencing guideline case dealing with the application of a decision by the United States Supreme Court which was issued between the date of sentencing and the Eighth Circuit decision in the Kalb case. This case was remanded for reconsideration of my departure decision in light of a recently decided United



- States Supreme Court case.
13. United States v. Thomas, 93 F.3d 479 (8<sup>th</sup> Cir. 1996). I was affirmed on all issues in this case, except for a firearms conviction under 18 U.S.C. § 924(c). The United States Supreme Court decision in United States v. Bailey had changed the controlling Eighth Circuit precedent on the issue of use of firearms in connection with a drug trafficking offense. In light of the Bailey decision, this case was reversed and remanded solely on the firearms issue.
  14. United States v. Fountain, 83 F.3d 946 (8<sup>th</sup> Cir. 1996). This case dealt with a change to the federal sentencing guidelines. I applied the guidelines as written. The Court of Appeals decided that the guideline amendment conflicted with the statute and ordered the defendant resentenced.
  15. Kornblum v. St. Louis County, Missouri, 72 F.3d 661 (8<sup>th</sup> Cir. 1995) (en banc). I wrote this decision while sitting by designation with the Eighth Circuit Court of Appeals. Rehearing en banc was granted. On a 7-5 vote, the court, en banc, determined that there was a due process violation of the homeowner's property rights.
  16. United States v. Lazaro-Guadarrama, 71 F.3d 1419 (8<sup>th</sup> Cir. 1995). This case dealt with application of the sentencing guidelines as they affect illegal immigrants.
  17. Montgomery v. Chater, 69 F.3d 273 (8<sup>th</sup> Cir. 1995). This case was remanded for further proceedings dealing with a vocational expert's testimony in a Social Security case.
  18. United States v. TIC Investment Corp., 68 F.3d 1082 (8<sup>th</sup> Cir. 1995). This case dealt with the liability of a parent corporation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The bulk of the decision was affirmed. However, there was a partial reversal.
  19. United States v. Jackson, et al., 67 F.3d 1359 (8<sup>th</sup> Cir. 1995). The judgment as to both defendants in this case was affirmed. The sentence was affirmed as to one defendant but the case was remanded on a guideline sentencing issue as to the second defendant.
  20. United States v. Douglas, 64 F.3d 450 (8<sup>th</sup> Cir. 1995). The case was remanded for resentencing

- as a result of a change in the federal sentencing guidelines.
21. United States v. Cabbell, et al., 35 F.3d 1255 (8<sup>th</sup> Cir. 1994). The verdicts as a result of the jury trials in this case were affirmed. The sentence of one defendant was remanded for consideration of a guideline sentencing issue.
  22. United States v. McDermott, et al., 29 F.3d 404 (8<sup>th</sup> Cir. 1994). The convictions and sentences in this case were affirmed except for the conviction on one misdemeanor violation. The vacating of the misdemeanor conviction had no impact upon the sentence as to either defendant.
  23. United States v. West, 28 F.3d 748 (8<sup>th</sup> Cir. 1994). The decision granting the defendant a new trial was reversed.
  24. United States v. Brewer, 23 F.3d 1317 (8<sup>th</sup> Cir. 1994). This case was reversed and remanded on a sentencing guideline issue.
  25. In re Windsor on the River Associates, Ltd. v. Balcor Real Estate Finance, Inc., 7 F.3d 127 (8<sup>th</sup> Cir. 1993). This is a bankruptcy case I decided after going on the district bench. The court reversed my order confirming the debtor's Chapter 11 plan.
  26. In re Hanna, 872 F.2d 829 (8<sup>th</sup> Cir. 1989). My decision as a bankruptcy judge was affirmed by the district court but reversed by the circuit court. The issue in this case dealt with the accrual of interest and penalty on nondischargeable federal income tax liabilities.
  27. In re Easton, 883 F.2d 630 (8<sup>th</sup> Cir. 1989). The district court affirmed my decision as a bankruptcy judge. However, the Eighth Circuit, in a 2-1 decision, found that the debtors did not meet the definition of family farmers for purposes of filing under Chapter 12 of the Bankruptcy Code.
  28. A. Frank Baron, Trustee, plaintiff-appellant v. Moorman Mfg. Co., et al., appellee, 105 B.R. 500 (N.D. Iowa 1988). My decision as a bankruptcy judge was reversed by the district court. This case involves the issue of whether the debtor's pension plan is considered property of the estate.
  29. Mutual of Omaha Insurance Co., plaintiff - appellant v. A. Frank Baron - appellee, C 88-4155 (N.D. Iowa Sept. 29, 1989). My

decision as a bankruptcy judge was reversed by the district court in an unpublished decision. This was another pension case where the district court affirmed that portion of my decision which found that the pension plan in question was property of the estate, but reversed that portion of my order which required the pension plan administrator to turn over the pension fund to the bankruptcy trustee.

30. In re Edward W. McAtee, 115 B.R. 180 (N.D. Iowa 1990). My decision as a bankruptcy judge was reversed by the district court. This case involved interpretation of a provision of the Internal Revenue Code dealing with the debtor's treatment of certain individuals as independent contractors vis-a-vis employees for withholding tax purposes.
31. In re Weis, C90-2033 (N.D. Iowa Dec. 4, 1990). My decision as a bankruptcy judge was reversed in an unpublished decision by the district court. This case involved interpretation of a bankruptcy rule concerning timeliness of an objection to exemptions.
32. Wm. Dennis Currell, plaintiff v. Frank Taylor, et al., - defendants, C 90-169 (N.D. Iowa Apr. 1, 1991). My decision as a bankruptcy judge was reversed by the district court and remanded in connection with a pension case. The case was appealed to the Eighth Circuit Court of Appeals which dismissed the appeal as not resulting from a final judgment. The case was eventually settled. In this case I had found that the pension plan in question was a spendthrift trust and, therefore, not property of the estate.

and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions.

1. U.S. v. Smith, 964 F. Supp. 286 (N.D. Iowa 1997). I had one of the first cases in the country dealing with the newly enacted statute which prohibited a person convicted of a misdemeanor crime of domestic violence from possessing a firearm. The statute was challenged on a number of constitutional grounds. This case dealt with those constitutional issues. My decision was affirmed by the Eighth Circuit at 171 F.3d 671 (1999).

2. U.S. v. McDermott, 822 F. Supp. 582 (N.D. Iowa 1993). This case dealt with the challenge against a prosecution for a "cross burning" under the civil rights statute. The case dealt with the First Amendment challenges to that prosecution. My ruling on the constitutional issue was affirmed by the Eighth Circuit at 39 F.3d 404 (1994).
3. In re Punke, 68 B.R. 936 (Bankr. N.D. Iowa 1987). In this case I discussed the constitutionality of a change to the Iowa exemption statute.
16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

The only public offices I have ever held are my current position as United States District Court Judge and my former position as United States Bankruptcy Judge.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 

I did not serve as clerk to a judge.
  2. whether you practiced alone, and if so, the addresses and dates;
 

I have not practiced alone.
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Upon graduation from law school, I

joined the firm of O'Connor, Thomas, Wright, Hammer, Bertsch & Norby, Dubuque, Iowa, as an associate. I became a partner in that firm in 1980 and later a shareholder when the firm incorporated under the name of O'Connor & Thomas, P.C., in 1984. I remained with that firm until my appointment as United States Bankruptcy Judge. My former law firm is located at 200 CyCare Plaza, Dubuque, Iowa 52001. I was employed at the O'Connor & Thomas firm from August, 1974, until January, 1986.

I served as a United States Bankruptcy Judge from January 1986, to August 1992. I have been a United States District Court Judge from August 1992, to date.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I had a general law practice. I had experience in the areas of litigation, real estate, administrative law, commercial law, bankruptcy, domestic relations, and some limited tax work.

In the early years of my practice, much of my time was spent as an associate working with senior members of the firm in the litigation area. My former firm did a significant amount of civil litigation, particularly insurance defense work. I had the opportunity to participate in the preparation of a number of cases, several of which went to trial. In most of those trials I "second-chaired" the case, however, as my experience progressed, I was able to take some cases to jury trial on my own.

As my practice developed, I broadened into a number of different areas, still

continuing to do a significant amount of litigation. I handled some significant plaintiff cases which resulted in settlements. I also had experience in the "quasi-litigation" area of administrative law. These matters included contested proceedings before the Iowa Department of Revenue and Iowa Department of Job Service.

I also began to develop a broader practice in the non-litigation field. I developed a significant practice with non-profit corporations such as religious orders, schools, churches, colleges, and church related educational systems. I also developed a significant real estate practice and to a much more limited extent a general estate and tax practice.

I also began to develop more of a practice in the Commercial Law/Bankruptcy area. My former law firm represented two of the three major banks in the Dubuque area. I handled a large amount of transactional work for the banks and also did most of the firm's bankruptcy work.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Some of my typical former clients in the non-profit sector included Sisters of the Presentation religious order, Archdiocese of Dubuque Board of Education, Wahlert High School, and Church of the Resurrection. In the commercial law area, I did work for First National Bank of Dubuque and American Trust & Savings Bank. In the insurance defense area I represented Safeco Insurance Company and Economy Fire & Casualty.

- C. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court occasionally. Over the years my actual trial time decreased, although I did still try cases. Many of the more significant matters I was involved in ended up being settled prior to trial.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

a. I had a very limited practice in the U.S. District Court. Most of my federal practice was in the bankruptcy court. This comprised approximately 10% of my total litigation experience.

b. About 85% of my trial experience was in the Iowa and Illinois state courts.

c. Approximately 5% of my litigation experience involved administrative review matters before the Iowa Department of Job Service and Iowa Department of Revenue. I handled several significant tax and employment related matters for clients of our firm.

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

- (a) Civil - 100%
- (b) Criminal - 0%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that I have tried 15-20 cases to verdict or judgment, as opposed to cases which have been settled. In approximately 1/3 of those I was associate counsel, while in the balance I was sole or chief counsel.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury

I would estimate that my litigation experience is split generally 50% jury and 50% non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I have listed my ten most significant cases. Since I have been a judge for more than 15 years some of the addresses and telephone numbers may be outdated. I have attempted to give current addresses and telephone numbers to the extent possible

1. Temperly, Wachter and Johnson v. City of Galena, Becker & Sons Stone Co., Galena St. Bank, and Wiene Bros., Nos. 82-L-3 and 82-L-12, Jo Daviess Co., Ill. The case was filed in January, 1982, and terminated in April, 1983.

This was one of the most interesting and unusual cases I was involved in while in private practice. A newly constructed limestone retaining wall, built adjacent to a drive-in bank facility collapsed. Three bank customers in a car using the drive-thru facility were killed in the accident.

I represented Wiene Bros. Excavating Co., one of the sub-contractors, which worked on construction of the wall. There were a number of unusual aspects to the case, including questions of the appropriate measure of damages under Illinois law for the decedents' estates, interesting issues of causality and expert testimony, and complexities



involved in handling a case with multiple plaintiffs and multiple defendants. I was extensively involved in the factual investigation, depositions, and preparation of the case.

The case was pending in Jo Daviess County, Illinois. The case was assigned to the Honorable Thomas E. Hornsby, Circuit Judge from Dixon, Illinois. Judge Hornsby convened and presided over a settlement conference which ultimately resulted in the case being settled shortly before trial. I found the use of the settlement techniques by Judge Hornsby to be particularly interesting, since some of those techniques were fairly new at that time.

The other counsel to the case were as follows:

- i. Co-defendant, Walter Becker & Sons, was represented by attorneys Robert Bates, Jr., of the firm of Bates & Carey, 333 West Wacker Drive, Suite 900, Chicago, Illinois 60606, telephone no. 312-762-3100, and Richard Phelan, of the firm of Foley & Lardner, Suite 3300, One IBM Plaza, 330 N. Wabash Avenue, Chicago, Illinois 60611-3608, telephone no. 312-755-1900.
  - ii. Co-defendant, Galena State Bank, was represented by attorney Alred W. Cowan of the firm of Brassfield, Cowan & Howard, 206 West State Street, #1107, Rockford, Illinois 61101, telephone no. 815-968-8878.
  - iii. Co-defendant, City of Galena, was represented by attorney James W. Richardson, Galena, Illinois. Mr. Richardson is since deceased.
  - iv. The plaintiff, Johnson, was represented by attorney Daniel P. Ernst. Mr. Ernst is now retired. The plaintiffs, Temperly and Wachter, were represented by attorney P. Michael Mahoney, now a magistrate judge for the Northern District of Illinois, 211 South Court Street, Rockford, Illinois 61101, telephone no. 815-987-4560, and attorney Daniel T. Williams, McGreevy, Johnson & Williams, 6735 Vistagreen Way, #200, Rockford, IL 61107, telephone no. 815-639-3700.
2. In re Sheppley, Case No. R-84-01160, U.S. Bankruptcy Court for the Northern District of Iowa. The case was tried in November, 1984. The presiding judge was the Honorable William W. Thinner (my predecessor on the bankruptcy court bench who is now deceased).

This case was significant in that it involved some difficult valuation issues and also presented some very interesting legal issues concerning the automatic stay provisions of the Bankruptcy Code and the grounds for relief from the automatic stay. There were also questions concerning adequate protection payments in the form of periodic payments on the debt owed to our client, First National Bank of Dubuque.

I was involved in developing and presenting the expert valuation testimony. I also had principal responsibility for writing the trial brief.

We were unsuccessful in obtaining a lifting of the automatic stay, however, our client did receive monthly adequate protection payments. Our client was quite satisfied with the result, since the debtor in this case began making payments which had previously not been made to our client. This decision is reported at 45 B.R. 753.

The other counsel in the case were as follows.

- i. My co-counsel was attorney Gary K. Norby, Kane, Norby & Reddick, 2100 Asbury Road, Suite 2, Dubuque, Iowa 52001, telephone no. 319-582-7980.
  - ii. The counsel for the debtor were attorneys Alfred E. Hughes, Hughes & Trannel, 1154 Iowa Street, Dubuque, Iowa 52001, telephone no. 319-557-7360, and Ronald R. Peterson, Jenner & Block, One IBM Plaza Chicago, Illinois 60611, telephone no. 312-222-9350.
  - iii. The attorney for Metropolitan Insurance was Frank L. Burnette II, Burnette & Kelly, 505 5<sup>th</sup> Avenue, Suite 808, Des Moines, Iowa 50309-2317, telephone no. 515-283-5207.
3. Kafer v. Huebner, Iowa District Court in and for Dubuque County, Law No. 44789. This case was tried to a jury in April, 1985. The presiding judge was the Honorable T. H. Nelson. I represented the defendant, Linda S. Huebner.

This case is significant in that it is one of the last jury trials I tried before going on the bankruptcy court bench. The case did not involve particularly difficult liability issues, since it was clear that our client had run a red light. Consequently, we were litigating over the issue of damages. There were some difficult issues concerning

testimony by orthopedic surgeons. I was able to obtain a very favorable result in the case when the jury returned a verdict of \$3,500. This was substantially below any settlement demand and was at the extreme low end of what we believed the verdict range to be. The plaintiff requested a new trial on the issue of damages and the motion was denied.

I had no co-counsel in this case. The opposing counsel for the plaintiff was attorney Mark S. Beckman, 790 Town Clock Plaza, Gallery Ct., Dubuque, Iowa 52001, telephone no. 319-585-1310.

4. H & W Motor Express v. Iowa Dept. of Job-Service, in Iowa District Court in and for Dubuque County, Law No. 44947. The case was tried on December 23, 1985. The presiding judge was the Honorable James S. Bauch, Black Hawk County, Iowa. I represented the plaintiff, H & W Motor Express.

It involved an administrative appeal to the Iowa District Court of an adverse decision by a hearing officer with the Iowa Department of Job Service. Our client had purchased a portion of the assets of another trucking company. The Department of Job Service attempted to impose successor liability on our client for the unfavorable employment tax rating of the company from which our client had purchased the assets. If this action had been successful, our client would have faced additional assessments for unemployment tax well into the six figures.

Another firm handled the matter at the administrative level before the Department of Job Service and before a Job Service hearing officer. When the Job Service hearing officer ruled against our client, I was asked to take an appeal of the decision to the Iowa District Court. The matter was briefed and argued before the Iowa District Court and I was successful in obtaining a reversal of the decision. The Department of Job Service did not appeal the Iowa District Court decision.

The opposing counsel was attorney Joseph Bervid, 1000 E. Grand Avenue, Des Moines, Iowa 50319, telephone no. 515-281-8117.

5. Ludovissey v. Ludovissey and Clayton County, Iowa District Court in and for Clayton County, No. C1588-0681 and Fayette County Law No. 38923. Since this matter was settled prior to trial, there is no presiding judge. The case was filed

in June, 1981, and dismissed in December, 1983. I represented the plaintiff, Carol Ludovissey, individually, and as administrator of the estate of Steven Ludovissey. This is one of the first and most significant plaintiff cases I handled. Carol Ludovissey and her husband, Steve Ludovissey, were involved in a head-on collision at the crest of a narrow two-lane gravel road in Clayton County, Iowa. Carol and her husband had only been married for a short time. Steve Ludovissey was killed in the accident and Carol Ludovissey was seriously injured. Coincidentally, the parties in the other vehicle in the collision were distant relatives of Steve Ludovissey and were also named Ludovissey. We also sued Clayton County, Iowa, for inadequate design, signing and maintenance of the road.

The case presented a number of very difficult factual and legal issues. First, there was the issue of fault. There were no eyewitnesses to the accident other than the parties in the two vehicles. There was conflicting testimony as to whether one or both of the vehicles were across the center line of the road. The physical evidence was not conclusive and all parties had retained expert accident reconstruction witnesses to testify as to causation. In addition, there were significant factual and legal issues concerning the liability of the county for inadequate maintenance, design, and signing of the road. We had to deal with a newly enacted Iowa Statute which was put in place to immunize counties from the type of lawsuit which was at issue in this case.

I was the principal attorney in the case. I did the bulk of the investigation, depositions and legal research. I was eventually able to negotiate a six figure settlement which I felt was very favorable to our client. Carol Ludovissey was very satisfied with the settlement and with our efforts in this case. The settlement was reached only after an extensive investigation and numerous depositions.

Other counsel to the suit were as follows:

- i. I had as my co-counsel, attorney John Arenz of my former law firm of O'Connor & Thomas, P.C., 200 CyCare Plaza, Dubuque, Iowa 52001, telephone no. 319-557-8400.
- ii. A counterclaim was filed against the estate of Steven Ludovissey by the defendants. Steven Ludovissey was represented on the counterclaim by attorney Donald L.

Breitbach of the firm of Reynolds & Kenline, 222 Fischer Bldg., Dubuque, Iowa 52004, telephone no. 319-556-8000.

iii. The defendants, Ludovissey, were represented by attorney William C. Fuerste, 200 Security Building, Dubuque, Iowa 52001, telephone no. 319-556-4011. Clayton County was represented by attorney James R. Hellman, 3151 Brockway Road, P.O. Box 810, Waterloo, Iowa 50704, telephone no. 319-234-4471, and county attorney Kevin C. Clefisch, 108 S. Main St., Garnavillo, Iowa 52049, telephone no. 319-964-2675.

6. McDermott v. Schroeder, Iowa District Court in and for Dubuque County, Law No. 43337. This case was tried to a jury in July, 1982. The presiding judge was the Honorable T. H. Nelson. I represented the defendant in this case.

This case was interesting for the reason that I again was faced with having to admit liability and argue strictly the issue of damages. Our client had rear-ended the plaintiff's vehicle. The claim was brought by both the husband and wife, an older couple, who were riding in the vehicle which was struck by our client. We offered to confess judgment and ended up having to try the issue of damages. I was required to depose and cross-examine orthopedic surgeons concerning the nature and extent of the plaintiff's injuries. Eventually, the jury came back with a verdict for both plaintiffs totaling \$4,650. Our client considered this to be an extremely favorable verdict.

I did not have co-counsel. The opposing counsel were attorneys Allan J. Carew and Robert Sudmeier of the firm of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., 200 Security Building, Dubuque, Iowa 52001, telephone no. 319-556-4011.

7. Miller v. Church of the Resurrection, Iowa District Court in and for Dubuque County. Law No. 44223. The presiding judge was the Honorable T.H. Nelson. I represented the defendant, Church of the Resurrection. The case was commenced in June, 1983, and terminated in January, 1985.

The significance of this case is that it involved a wrongful termination suit. At the time this case was filed, wrongful termination was a developing area of the law and the law was in a state of flux.

I was responsible for all the factual investigation, including interviews of the school officials and board members, and all the legal research. Unfortunately, we were unsuccessful in arguing that the employment contract between the employer and employee was not breached. The Court found in favor of the employee on cross motions for summary judgment.

There was no co-counsel to the case. The plaintiff was represented by attorney Robert Sudmeier, of the firm of Fuerste, Carew, Coyle, Juergens and Sudmeier, P.C., 200 Security Bldg., Dubuque, Iowa 52001, telephone no. 319-556-4011.

8. Iowa State Highway Commission v. Dubuque Sand and Gravel Co., Iowa District Court in and for Dubuque County. Law No. 39961. This case was appealed and the decision on the appeal is reported at 258 N.W.2d 153 (Iowa 1977). The case was tried before the Honorable T.H. Nelson in December 1975. I represented the defendant, Dubuque Sand and Gravel Co.

This case is significant for the reason I tried it fairly early in my legal career. I basically second-chaired the case with another member of my firm, Robert M. Bertsch. The case involved a condemnation proceeding by the State Highway Commission. Part of the property which our client was claiming title to was a street which had been platted approximately 120 years prior to the condemnation. The street had never actually been opened or used by the general public, but the dedication of the street in the plat had not been vacated.

I was required to do most of the research and brief writing on the difficult legal issues concerning title to the real estate. We were successful in convincing the trial court of our legal position and obtained a very good result for our client. The Highway Commission appealed the case and I was responsible for doing the bulk of the appellate brief. The decision of the trial court was affirmed on the appeal of the Highway Commission. We had filed a cross-appeal on the adequacy of the attorney fee award by the trial court. The Supreme Court upheld our position on the cross-appeal and increased the trial court award.

My co-counsel was attorney Robert M. Bertsch of my former law firm, O'Connor & Thomas, P.C., 200 CyCare Plaza, Dubuque, Iowa 52001, telephone no. 319-557-8400. The Iowa

State Highway Commission was represented by attorney David Setter, 12<sup>th</sup> & Iowa Streets, P.O. Box 703, Dubuque, Iowa 52001, telephone no. 319-588-0547.

9. McCoy v. Lacroix, Illinois Circuit Court in and for Jo Daviess County, Law No. 78-L-17. This case was tried before the Honorable Harold Nagle on April 1, 1981. I represented the plaintiff, Robert M. McCoy.

This case involved a personal injury lawsuit brought by our client. The case was tried to the court and involved interesting issues of liability and damages. Our client's automobile had collided with the rear tandem wheels of a semi-tractor trailer. There was the issue of whether our client had crossed the center line or whether the trailer had crossed the center line as the trucker came around a curve. There were also difficult issues of damages, including whether our client's wholly owned corporation could claim lost profits due to the inability of our client to dedicate his efforts to the corporate business.

This case was tried to the court. The court ruled in our favor and damages were awarded.

Attorney Robert Bertsch of my former law firm, O'Connor & Thomas, P.C, 200 CyCare Plaza, Dubuque, Iowa 52001, telephone no. 319-557-8400, tried the case with me. Opposing counsel was attorney N. Richard Elliott of Galena, Il. Mr. Elliott has since left the area and I do not know his current address.

10. Lipstock v. Seibert, Menasha Transport and Varied Enterprise, Iowa District Court in and for Dubuque County. Law No. 44590. This case was settled before trial and, therefore there was no trial judge. The case was filed on March 22, 1984, and dismissed on November 5, 1985. I represented the defendant, Varied Enterprise.

This case was significant because the plaintiff had suffered extremely serious injuries in an automobile/truck accident. There was little question that the plaintiff was not at fault, and that the truck driver had acted recklessly in his handling of the vehicle. The plaintiff suffered a massive closed head injury and was severely and permanently disabled as a result of the accident.

The interesting legal issue in the case was the status of my client. My client was in the business of "leasing" truck drivers to trucking companies. The trucking company was generally required to carry the liability insurance on the truck drivers which were operating their vehicles. However the trucking firm in this case, attempted to obtain contribution from my client on the theory my client had not adequately investigated the employment background of the leased employee, and that my client had leased an individual with an extremely poor driving record.

We were able to obtain a favorable result in the settlement of this case. A structured settlement was negotiated with a present value well into the seven figures. Our client's contribution to the settlement was minimal.

The plaintiff was represented by Michael A. Nelsen of the firm of Hillman, Forman, Nelsen, Childers & McCormick, Suite 650, 7171 Mercy Road, Omaha, Nebraska 68106, telephone no. 402-397-8051. The co-defendants, Seibert and Menasha Transport were represented by attorneys William C. Fuerste and Steven Juergens of the firm of Fuerste, Crew, Coyle, Juergens & Sudmeier, P.C., 200 Security Building, Dubuque, Iowa 52001, telephone no. 319-556-4011.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Since I have assumed my present position as United States District Judge, the most significant activities I have participated in as a judge include the following:

- a. This district has a very active United States Attorney and an extremely heavy criminal docket. I have been involved in over 800 criminal sentencings. I have handled a number of very significant criminal matters, including a criminal RICO prosecution against a motorcycle gang (a trial that lasted six weeks), a multi-week trial involving a prosecution against a doctor who was charged with illegally dispensing prescription medications, a civil rights case



involving a highly publicized cross burning, several environmental crime cases, as well as the usual federal docket of financial crimes, drug, gun, and immigration cases.

- b. I have had significant responsibility in a number of major civil cases. In particular, I have or am currently handling several major antitrust cases, patent cases, a number of significant civil rights cases, as well as cases involving federal statutes such as CERCLA, and the Clean Water Act. This is in addition to the usual docket of Social Security cases, federal collection practice, and other more routine areas of the federal civil docket. I believe this has given me a broad exposure to almost all of the practice areas that come before the Eighth Circuit Court of Appeals.
- c. I have been privileged to sit with the Eighth Circuit Court of Appeals on approximately six occasions. Again, I have had the opportunity to handle a wide variety of criminal and civil cases while sitting with the Court.
- d. In the area of Judicial Administration I have served as a Chief District Judge and have discharged the administrative responsibilities of a chief judge. I have also been privileged to serve on the Gender Fairness Task Force of the Eighth Circuit, chair the Bankruptcy Administration Committee of the Judicial Conference, and serve on the Eighth Circuit Pattern Jury Instruction Committee.

While a United States Bankruptcy Judge, I participated in the following significant activities.

- a. I presided over the largest bankruptcy case ever filed in the state of Iowa. These were the consolidated cases of Morris Plan Company of Iowa and MorAmerica Financial Corporation. This case involved the failure of an industrial thrift organization. There were approximately 20,000 depositors (who all became creditors of the estate) and over \$100 million in debt. I implemented a number of techniques to make the system more accessible to the many creditors in

the case. These included unusual procedures dealing with disclosure of the plan of reorganization, informational meetings for creditors, and opportunities for creditors to have full participation in the case.

- b. I handled the case of Peoples Bankshares. This is one of the first bank holding company reorganizations in the country. I worked closely with the United States District Court Judge who had jurisdiction over a number of federal ERISA suits, as well as the Iowa District Court Judge who was involved in a large number of tort claims against the bank. We developed a number of innovative techniques to jointly preside over the case.
- c. I have also been involved in a number of large chapter 11 reorganizations, including In re Iowa Trust, In re Armstrong's, Inc., In re Cedar Rapids Meats, Inc., In re Kwik-Way Industries, In re Van Dyke, and In re Benton. All these cases involved large numbers of creditors, parties, attorneys, and substantial financial interests.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have an account with the Federal Employees Retirement System. Since I will remain a federal employee, I anticipate the account will remain invested in FERS until I retire. I have no other deferred income arrangements nor other future benefit contracts.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Since I have been out of the private practice of law for over 15 years, I do not anticipate having to resolve any potential conflicts of interest.

I own stock in just a couple of companies. I do not anticipate having any difficulty keeping track of those stockholdings and, if necessary, I will sell the stock in order to avoid any potential conflict. The bulk of my other investments are in my home, life insurance, and mutual funds. I have deliberately made the decision to invest primarily in mutual funds to avoid any potential conflicts of interest.

The only other potential conflicts of interest involve employment by relatives. I have a brother and two brothers-in-law who are attorneys. All three individuals practice in the state of Minnesota. If they or their firms have any cases before the Eighth Circuit Court of Appeals, I will recuse from consideration of those cases.

The Canons of Judicial Ethics which govern the federal courts prohibit a judicial officer from sitting on a case in which the judge has any financial interest. I have always followed this Canon. I will keep myself fully informed as to all parties affected by cases assigned to me. If any conflicts of interest arise, I will recuse myself.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Financial Disclosure Report for new nominees is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Financial Net Worth Statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was active in the Tauke for Congress Committee in the 1978, 1980, 1982, and 1984 campaigns. In each of those campaigns I served as Co-Chairperson of the campaign.

## III. GENERAL (PUBLIC)

An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer", regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I feel I have discharged this professional responsibility through the various civic activities I was involved in while in private practice. These activities included my participation on the Clarke College Development Council. I was a member of this organization from 1977 to 1986. In 1982-1983, I chaired the annual fund raising drive. The following year 1983-1984, I chaired the Development Council. Subsequent to that date, I served on an advisory committee to the president of the college.

I feel the activities I was involved in which helped raise operating funds and scholarships for the students was very helpful in providing an affordable college education for the Clarke College students. I devoted significant time to these activities, particularly during the two years when I was chairperson of the annual fund raising drive and chairperson of the council. I would estimate that in the year I was chairperson of the fund drive, I spent in excess of 100 hours that year on the fund drive.

I was also very active in church related activities. I served on the Church of the Nativity School Board and was Vice-President of the Board. I was also very active in the Dubuque Catholic Metropolitan School Board. One of the goals of both of these organizations was to attempt to provide quality and affordable religious education to all students, regardless of race, color, creed, and financial background. I was involved in attempting to make Catholic education more affordable for all students and implementing ways to broaden the reach of Catholic education. One of my primary responsibilities as a member of the Metropolitan School Board was to work with the Iowa Legislature to promote funding for tuition assistance, text books, shared time programs, and school bus transportation for parochial school students. While these benefits were applicable to all students, it was particularly important to obtain this assistance in order to make Catholic education affordable to disadvantaged students.

As a United States District Court Judge, an activity that I am particularly proud of is my service on the Eighth Circuit Gender Fairness Task Force. The Task Force studied issues relating to gender bias in the courts of the Eighth Circuit, prepared a lengthy and detailed report, and came forth with recommendations for changes and methods to implement those recommendations. I was also a member of the Eighth Circuit Judicial Council at the time the report came before the Council for consideration. I was a very active advocate for the report. I feel this activity was of great benefit to the members of the Eighth Circuit Bar, as well as the parties and litigants which come before the court.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I belonged to two Catholic organizations which limited their membership to Catholic men. These organizations were the Knights of Columbus and Serra Club. I have not been a member of either organization since I left Dubuque, Iowa, in January 1986, to assume my position as United States Bankruptcy Judge.

The Knights of Columbus is a Catholic men's fraternal organization. My father was a long time member of the Knights of Columbus and very active in the organization. I became a member through his sponsorship, however, I was never active and held no office.

I was considerably more active in the Serra Club. The Serra Club was an organization which fostered vocations to the Catholic priesthood and religious life. I was both an active member and an officer. I held various offices in the organization, including vice-president, president, and member of the board. While I was a member of the organization, membership was limited to Catholic men. Since I left the organization in January 1986, Serra International has amended its by-laws to allow local clubs to admit

women. The Dubuque Serra Club does admit women and has women as both members and officers.

I have belonged to no organizations other than those associated with the Catholic church which restrict membership on the basis of sex or religion. I have never belonged to any organization which limits membership on the basis of race.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews which you participated).

Senator Charles Grassley solicited resumes from individuals seeking consideration for appointment to the Eighth Circuit Court of Appeals. I sent a resume to Senator Grassley asking that I be considered for the position.

Senator Grassley set up an Advisory Committee which was composed of attorneys. I was interviewed by each member of that Advisory Committee. Ultimately, my name was included in a list of four persons recommended by Senator Grassley to the White House for appointment to the Eighth Circuit Court of Appeals.

On March 14, 2001, I was interviewed at the White House in the office of the White House counsel. In mid-April 2001, I was informed by the White House Counsel's office that I was selected to go forward with the process. I was advised that I would be required to submit a number of forms and be subjected to an FBI investigation. I was nominated for the Eighth Circuit Court of Appeals on July 10, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

It is the responsibility of a federal judge to decide only the case or controversy which is currently before the court based upon the facts and legal principles which arise in that particular case. The pole star which should guide any judge in adjudicating such a case or controversy, is the United States Constitution and any applicable federal or state statutes. A judge should be careful to apply the constitution and statute as drafted, guided by controlling precedent and, where appropriate, legislative history, in adjudicating the controversy. A judge should not use a particular case to fashion a remedy which attempts to address a judge's



particular view of a broader social policy.

In fashioning an appropriate remedy to resolve a particular constitutional or statutory violation, a judge must be careful to grant to the prevailing party a full, effective, and complete remedy. The judge must balance the obligation to fully and fairly fashion a complete remedy with the principle of being as minimally intrusive as possible into the manner in which state or federal governments discharge their responsibilities which are the subject of the alleged constitutional violation. As a co-equal branch of government, the Judiciary must be prepared to adjudicate alleged constitutional violations and fashion appropriate remedies. However, the Judiciary must also give due deference to the other co-equal branches of government and recognize the right of the Legislature to enact laws and the Executive to implement national policy.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	20,000		Notes payable to banks--secured		0
U.S. Government securities--add schedule	0		Notes payable to banks--unsecured		0
Listed securities--add schedule	131,500		Notes payable to relatives		0
Unlisted securities--add schedule	10,000		Notes payable to others		0
Accounts and notes receivable:	0		Accounts and bills due		0
Due from relatives and friends	0		Unpaid income tax		0
Due from others	0		Other unpaid tax and interest		0
Doubtful	0		Real estate mortgages payable--add schedule	278,000	
Real estate owned--add schedule	290,000		Chattel mortgages and other liens payable		
Real estate mortgages receivable	0		Other debts--itemize:		
Autos and other personal property	45,000		LIFE INSURANCE LOAN	37,500	
Cash value--life insurance	57,000				
Other assets--itemize:					
FEDERAL EMPLOYMENT	133,000				
RETIREMENT SYSTEM ACCOUNT					
			Total Liabilities	315,500	
			Net Worth	371,000	
Total Assets	686,500		Total liabilities and net worth	686,500	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	NONE		Are any assets pledged? (Add schedule.)	YES	
On leases or contracts	NONE		Are you defendant in any suits or legal actions?	NO	
Legal Claims	NONE		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	NONE				
Other special debt	NONE				

**FINANCIAL STATEMENT**Listed Securities

Vanguard 500 Index Fund (IRA)	\$65,000
PBHG Large Cap 20 Fund (IRA)	34,000
Hungry Minds, Inc. (IRA)	4,000
Firststar Money Market (IRA)	13,500
Firststar Growth & Income Fund (IRA)	<u>15,000</u>
	\$131,500

Unlisted Securities

Home Technology Systems, Inc. (IRA)	\$10,000
-------------------------------------	----------

Real Estate Owned

Residence, Cedar Rapids, Iowa	\$290,000
-------------------------------	-----------

Real Estate Mortgages

Following debts are secured by mortgage  
on personal residence, Cedar Rapids, Ia

Principal Residential Mortgage	\$183,000
Firststar Bank	36,000
Washington University	<u>59,000</u>
	\$278,000

JUDGE MICHAEL J. MULLOY

**FINANCIAL DISCLOSURE REPORT**  
Nomination Report

319 286 2331 P.102/106  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

(w)  
/2000

1. Reporting Officer (Last name, first, middle initial)  
cy, Michael J.

2. Court or Organization  
Eighth Circuit Court of Appeal

3. Date of Report  
07/15/2001

4. (Article II judges indicate active or senior status; magistrate judges indicate full- or part-time)  
Full Judge Nominee

5. Report Type (check type)  
X Nomination, Date 01/10/2001  
Initial Annual Final

6. Reporting Period  
01/01/2000 to 06/30/2001

7. Numbers or Office Address  
1st S.E., Suite 302  
at Rapids, IA 52401-1230

8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.

Reviewing Officer \_\_\_\_\_ Date \_\_\_\_\_

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the **NONE** box for each section where you have no reportable information. Sign on the last page.

**POSITIONS** (Reporting individual only; see pp. 9-13 of instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<b>NONE</b> (No reportable positions.)	

**AGREEMENTS** (Reporting individual only; see pp. 14-16 of instructions.)

DATE	PARTIES AND TERMS
<b>NONE</b> (No reportable agreements.)	

**NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<b>NONE</b> (No reportable non-investment income.)		
99-2000	St. Joseph School	
00-2001	Cedar Rapids Community School District	

JULY 17, 2001 12:01 PM  
 SQUARE MICHAEL J. MULLOY  
 315 250 2331 P.03/05  
**ANNUAL DISCLOSURE REPORT** Melloy, Michael J. 07/13/2001

**REIMBURSEMENTS** — transportation, lodging, food, entertainment.  
*includes those to spouse and dependent children. See pp. 25-28 of Instructions.*

SOURCE	DESCRIPTION
NONE (No such reportable reimbursements.)	
Exempt	

#### GIFTS

*includes those to spouse and dependent children. See pp. 29-32 of Instructions.*

SOURCE	DESCRIPTION	VALUE
NONE (No such reportable gifts.)		

#### I. LIABILITIES

*includes those to spouse and dependent children. See pp. 33-35 of Instructions.*

CREDITOR	DESCRIPTION	VALUE CODE*
NONE (No reportable liabilities.)		
1 Washington University	Education Loan for daughter's education	L
2 Northwestern Mutual Life	Policy Loan	J
3		
4		
5		
6		

VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

A. Date of Assets disposition (asset)	B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period															
		(1) Amount	(2) Type	(1) Value	(2) Value	(1) Type	If not exempt from disclosure												
		Code (A-H)	(e.g., dividend, rent or interest)	Code (J-P)	Method (Q-W)	(e.g., buy, sell, partial sale, merger, redemption)	(2) Date	(3) Value	(4) Gain	(5) Identity of buyer/seller (if private transaction)									
None (No reportable income, gifts, or transactions.)																			
1 Firststar Bank Checking Account	A Interest	J	T																
2 Northwestern Mutual Life Insurance Company-cash values	C Interest	K	T																
3 Home Technology Systems Stock in Merchantile Bank IRA	A None	J	T																
4 PBHG Funds-Large Cap 20 Fund in IRA account	A Dividend	K	T																
5 General Mills common stock (DC)	A Dividend	J	T	Sold	5/00	J	A												
6 General Mills common stock (DC)	A Dividend	J	T																
7 Firststar Bank Stock Fund in IRA	A Dividend	K	T																
8 Vanguard Group Star Fund in IRA account	B Dividend	J	T	Redeemed	2/00	K	C												
9 Vanguard Group 500 Index Fund in IRA	A Dividend	L	T																
10 MONEY cash value life insurance	A Interest	J	T																
11 Hungry Minns, Inc.	A Dividend	J	T																
12																			
13																			
14																			
15																			
16																			
17																			
Net Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more																			
Net Loss Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more																			
Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash Market (Col. C2) U=Book Value V=Other W=Estimated																			

FINANCIAL DISCLOSURE REPORT Melloy, Michael J.

DATE OF REPORT  
07/13/2001

II. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Name of Person Reporting

DATE OF REPORT  
07/13/2001

FINANCIAL DISCLOSURE REPORT Melloy, Michael J.

CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

*Michael J. Melloy*

Date

*7/13/01*

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator CANTWELL. Well, with that, I think that what we will do is give members an opportunity to ask questions, maybe alternating, since the Senator from Iowa is here. But I think I will start, Mr. Melloy, with a question about personal privacy.

Prior to September 11, this issue was really one of the top issues of concern for Americans on a variety of issues. They were concerned about the intrusion of people into their most personal decisions and information. They were concerned about government maybe intruding. They were concerned about how businesses handled their consumer information. They were concerned about how information might be attained about them.

Could you describe for me what you think the key elements of the Federal right to privacy are?

Judge MELLOY. Well, I think the key elements, Senator, are, first of all, that a person have knowledge about what is being put on the Internet, if that is what we are talking about, or being disseminated through some type of clearinghouse; and, secondly, that they not only have notice about what is being put out there and being made available to the general public, but then they have some meaningful opportunity to file objections or make some type of statement that would allow them to have that information not disseminated.

I have had some experience in this issue through our Bankruptcy Administration Committee that I chair. We have been very concerned about confidential information that goes out on the Internet when we post court documents. Much of that information contains some pretty sensitive information.

We have been concerned about identity theft that might result from posting that type of information on the Internet and we have taken some measures to address those concerns, and it is something that, as I say, I have had some experience with and I think we have addressed it in that context.

Senator CANTWELL. Thank you.

Senator Grassley.

Senator GRASSLEY. Yes, thank you very much.

At times, Federal judges' deeply-held personal views or their views of the law and the Constitution can conflict with the constraints of judicial precedent. How should a judge resolve the differences between his personal views and stare decisis?

Judge MELLOY. Senator Grassley, stare decisis should always control. If I am fortunate enough to be confirmed for the position on the Eighth Circuit, I will be bound by my oath to follow the decisions and dictates of the United States Supreme Court, and I fully intend to do that.

Senator GRASSLEY. Could you define judicial activism for me? I know it is a pretty elementary question, but I always like to get judges' views on that.

Judge MELLOY. Well, I suppose everybody looks at it somewhat differently, Senator, but basically I think judicial activism can be best summarized as looking beyond the text of the statute or the Constitution, whatever it is the court may be interpreting, and to then try to superimpose one's own personal philosophy or views or what a person may believe is an appropriate social policy onto the case and, as I say, take it outside the text of the statute.



Senator GRASSLEY. Thank you.

Senator CANTWELL. Senator Kyl, do you have any questions?

Senator KYL. Thank you. Just one, Madam Chairman. Having graduated from both junior high school and high school in Davis County, Iowa, I should be an advocate of the two Iowa candidates here.

Judge MELLOY. I appreciate that, Senator.

Senator KYL. I just had one follow-up question to Senator Grassley's. As a member of the court of appeals, of course, the precedent of the U.S. Supreme Court is controlling in all situations, except some.

What circumstances, if any, do you think are appropriate for an appellate court judge to overturn precedent within that judge's circuit?

Judge MELLOY. You are not talking about—I am not sure I understood the premise of the—

Senator KYL. I am talking about the appellate court's—the Eighth Circuit's precedent, I should say.

Judge MELLOY. An appellate court should overrule the precedent of its own circuit, I think, very sparingly, but if the circuit has gotten it wrong before, then we clearly have a duty to revisit the issue.

In our circuit, the rule is that one panel is not allowed to overrule the decision of another panel. If a panel believes that another panel has incorrectly decided a case, then the judges can at that point call for a rehearing en banc, have the entire circuit revisit the issue, and if the case was originally decided incorrectly, overrule the decision. I think that is an appropriate approach and it is the one that I certainly would follow.

Senator GRASSLEY. May I ask one more question?

Senator CANTWELL. Go ahead, Senator Grassley.

Senator GRASSLEY. I am a believer and have promoted legislation and got some of it adopted that would promote alternative dispute resolution. To what extent have you had experience with alternative dispute resolution, and do you believe in it, that you would use it more? I don't know exactly from the Eighth Circuit promotion as opposed to district judges, but the extent to which you would use that.

Judge MELLOY. Well, maybe I could answer the second part first, Senator. It is my understanding that there is much utilization of alternative dispute resolution at the circuit court level.

The Eighth Circuit does have a settlement mediator and does try to see if there is any opportunity to settle a case even after it is on appeal. But, by definition, by the time a case gets on appeal, there has already been a trial, so the opportunities are much less for alternative dispute resolution at that point.

Going to the first part of your question, we do have an alternative dispute resolution plan in our district. We make extensive use of magistrate judges as settlement mediators or settlement judges. We use outside mediators. We encourage the lawyers to hire private, or go to private mediation, if they prefer that. And so we do provide a number of different opportunities, and I think it is something that is very worthwhile and is something that should definitely be encouraged both in terms of the efficiency of the

court's ability to handle cases as well as costs and delay to the litigants.

Senator GRASSLEY. And as a judge, you have done that?

Judge MELLOY. Yes, on many, many occasions.

Senator GRASSLEY. Thank you.

Senator CANTWELL. Mr. Melloy, as a district court judge—and this is an issue that Senator Harkin brought up, but I am sure you will be familiar with—as a district court judge, you have handled numerous criminal matters and are familiar with the Federal Sentencing Guidelines and mandatory minimum sentences.

Do you believe that there are particular cases where Federal judges should have more discretion to diverge from the guidelines than is currently being allowed by statute?

Judge MELLOY. Well, if I could break that down into two parts, Senator, let me say this. The case that Senator Harkin made reference to in his comments actually was a mandatory minimum case. The individual who was charged and convicted of the single bullet had been convicted on six prior occasions of burglaries, three of which were of post offices. And under the armed career criminal statute, there was a mandatory 15-year minimum which was what I was required to impose, and the Eighth Circuit upheld that sentence.

Having said that, I think there are certainly cases where mandatory minimums have been imposed where I wish I had more discretion, and *Yurkowsky* is probably one of them, quite frankly.

As far as the Sentencing Guidelines are concerned, however, there is much more discretion within the guidelines to depart, and there have been cases where I have felt somewhat constrained, but I have also found that in most cases where I really felt there was a compelling need to go outside the guidelines, there was sufficient latitude to depart.

So I don't have any serious problems with the guidelines. There are some things that I might change. There are probably some things a lot of judges would change, but basically I don't have a big problem with the guidelines. I think it is the mandatory minimums that become more difficult when you superimpose those onto the guidelines.

Senator CANTWELL. Thank you. As a district court judge, you have served on the Eighth Circuit's Gender Fairness Task Force.

Judge MELLOY. Yes.

Senator CANTWELL. I don't know if there is any correlation to all the women in your family in that.

Judge MELLOY. There is, as a matter of fact. [Laughter.]

Senator CANTWELL. The task force issued a report in 1997 that outlined the challenges and opportunities that would ensure equal opportunity for women judges and attorneys and court personnel.

Could you tell the committee what you learned in the process on the task force about the recommendations of getting more women in the judiciary and in and around our circuit courts?

Judge MELLOY. That was a very, very worthwhile project for me and one I enjoyed very much and I think I learned a lot from.

On the plus side, we found that things had dramatically improved for female attorneys over the 10 or 15 years prior to the date we were doing the study. We heard many, many female attor-

neys who would tell the horror stories of the old days when they first got out of law school 10 or 15 years before we did our report. So there had been dramatic improvements, and that, of course, was the positive side of the report.

The report and the study also showed, however, that there were definitely some areas that we needed to improve. One of them was in the area of accommodations to women—all attorneys, but particularly female attorneys. Many attorneys were concerned that judges were not as sensitive to the needs of issues such as pregnancy leave, child care responsibilities; that sometimes hearings had to be rescheduled because of sudden emergencies with day care providers, and that judges needed to be more sensitive to those issues.

We also found that there were some real problems with what female attorneys felt were civility within the legal system, more so outside the courtroom in the deposition and discovery setting than within the courtroom, but that was also an area that we found some definite problems.

Senator CANTWELL. Thank you.

Any other questions from my colleagues?

Senator GRASSLEY. I might say one thing. A person maybe you overlooked or he wasn't here when you acknowledged friends of yours that were in the audience, former Iowa Representative Tom Talke, is here.

Judge MELLO. Well, I am sorry I did. I didn't realize Tom was here, but he is a very, very good friend of mine and I appreciate very much his attendance. I did not realize he had come in and I very much appreciate his being here.

Senator GRASSLEY. That is all I have.

Senator CANTWELL. Well, Mr. Melloy, thank you for time before the committee. I know that we will have an open record for other members to submit questions, if they have them, and I know you will submit your answers back quickly to those.

We appreciate your time and your family's time in being here today.

Judge MELLO. Thank you again, Senator.

Senator CANTWELL. Thank you.

Let's move now to the district court nominees, if they could all come up together—Richard Leon, Jay Zainey, James Gritzner, Robert Blackburn, and Cindy Jorgenson. If you could, before you sit down, stand up so I can swear you in.

If you will raise your right hands, do you swear the testimony you are about to give before the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. GRITZNER. I do.

Judge BLACKBURN. I do.

Judge JORGENSEN. I do.

Mr. LEON. I swear.

Mr. ZAINEY. I do.

Senator CANTWELL. Please be seated.

I think maybe by our seating arrangement there that we have determined the process of individuals. So if the nominees would like to take the opportunity to introduce their family members that

are here and any other special guests, why don't we start with you, Mr. Gritzner.

**STATEMENT OF JAMES GRITZNER, OF IOWA, NOMINEE TO BE  
DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF IOWA**

Mr. GRITZNER. Thank you, Madam Chair. My wife, Zoe, is here with me today. Our son, Zack, is a student at Central College, in Pella, Iowa. He is impressing his father by not missing any classes today.

And I am also pleased that Michael Pratt is here. Michael Pratt is the son of Judge Robert Pratt, who, if I am fortunate enough to be confirmed by the committee, will be a colleague of mine, and I am pleased that Michael is here as well.

Thank you for that opportunity.

[The biographical information of Mr. Gritzner follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
James Edward Gritzner
2. Address: List current place of residence and office address(es).  

Residence West Des Moines, IA	Office 700 Walnut, Ste. 1600 Des Moines, IA 50309
----------------------------------	--
3. Date and place of birth.  
November 19, 1947  
Charles City, IA
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Married to Zoe Ann Gritzner (maiden name Burman)  
Spouse is a homemaker.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  

Dakota Wesleyan University Mitchell, SD 1965-1969 B.A. received August 22, 1969	The University of Northern Iowa Cedar Falls, IA 1971-1974 M.A. received January 23, 1974
Drake University Law School Des Moines, IA 1976-1979 J.D. received May 12, 1979	
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Announcer/reporter  
Mitchell Broadcasting Company  
Mitchell, SD  
1967-1969

News anchor/reporter  
Minnesota-Iowa Television, Inc.  
Austin, MN  
1969-1970

News reporter  
KCFI Radio  
Cedar Falls, IA  
1970

News reporter  
Anchorman  
Dir. Special News and Public Affairs Programming  
Blackhawk Broadcasting Company, Inc.  
Waterloo, IA  
1970-1976

Law clerk to Magistrate Judge R. E. Longstaff  
United States District Court  
Southern District of Iowa  
Des Moines, IA  
1977-1979

Associate Attorney  
Mosier, Thomas, Beatty, Dutton, Braun & Staack  
Waterloo, IA  
1979-1981

Board Member  
State of Iowa  
Board of Parole  
1980-1982

Partner attorney  
Humphrey, Haas & Gritzner  
Des Moines, IA  
1981-1982

Shareholder attorney  
Nyemaster, Goode, Voigts, West, Hansell & O'Brien, PC  
Des Moines, IA  
1982-present

Non-employment Position

Chairman of the Board and member of the Board of Directors for the Alliance for Arts and Understanding, 1996-1999.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None applicable.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Polk County Bar Association

Iowa State Bar Association

Executive Committee, Young Lawyers Section 1981-1983.

Federal Practice Committee 1994-present, Committee Chair 1996-1997.

Chair, Ethics Rules/Code Study Committee 2000.

Iowa Defense Counsel Association

Association of Trial Lawyers of Iowa

Board of Governors 1982-1984.

National Organization of Bar Counsel

Defense Research Institute

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Group

American Bar Association

Iowa State Bar Association

Iowa Defense Counsel Association

Defense Research Institute

National Fire Protection Association

Other

Des Moines Golf and Country Club

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Iowa Supreme Court (6/15/79)

United States District Court for the Northern District of Iowa (7/31/79)

United States District Court for the Southern District of Iowa (7/10/79)

United States Court of Appeals for the Eighth Circuit (9/18/79)

United States Supreme Court (6/24/85)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Comparative Negligence in Iowa--The Time Has Come for the Iowa Supreme Court to Put Its House in Order," 31 Drake L. Rev. 709 (1981-1982). (copy attached)

I have not given speeches on constitutional law or legal policy. I have given a number of speeches primarily on legal ethics, with a few additional topics:



Lecturer, Iowa Bar Review School, for law students preparing for the Iowa Bar Examination.

"Important Ethical Issues for Trial Lawyers", Iowa Defense Counsel Association (1993).

"Protecting Against Product Liability", Lorman Education Services (1993).

"Conflicts and Confidentiality for Government Lawyers", Attorney General's Seminar (1991).

"Ethical Issues for Business Attorneys and Corporate Counsel", Third Annual Corporate and Securities Law Seminar, Drake University Law School (1991).

"Principles of Professional Responsibility", Okoboji Lawyers' Chautauqua (1990).

"Emotional Stress and Professional Responsibility", The Governor's Annual Safety Conference (1990).

"The Duty to Report Misconduct," Iowa Association of Trial Lawyers, Annual Meeting (1989).

"When Lawyers Need Lawyers", Young Lawyers Section, Iowa State Bar Association, Bridge The Gap (1989).

"The Rationale for The Tax Cases: Attorney Discipline in the Failure to File Cases," Iowa State Bar Association, Annual Meeting Seminar (1988).

"Attorney Discipline in Iowa: An Overview," Iowa Academy of Trial Lawyers Seminar (1988).

"Conflicts of Interest", Association of Trial Lawyers of Iowa, Annual Meeting (1988).

"Ethics: The Do's and Don't's - Where Are The Complaints Coming From?" Iowa State Bar Association Traveling Seminar (1987).

"Attorney Discipline: An Overview of Grievance Commission Procedures," Association of Trial Lawyers of Iowa, Annual Convention (1982).

"Representation Beyond Sentencing and Appeal: The Iowa Board of Parole", Association of Trial Lawyers of Iowa, Annual Convention (1982).

(The few outlines for the foregoing presentations that are available are attached.)

13. Health: What is the present state of your health? List the date of your last physical examination.

The state of my health is good. I have a mild tendency toward diabetes, but that is being controlled with diet alone. I had a number of diagnostic tests in December of 2000.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

No judicial offices held.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

No public offices or candidacy.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Response: While still a law student, and after a successful internship with the U.S. District Court for the Southern District of Iowa, I was hired as an assistant to then U.S. Magistrate Judge Ronald E. Longstaff (now Chief U.S. District Judge) in the U.S. District Court for the Southern District of Iowa in Des Moines, Iowa. Full-time law clerks were not specifically provided for the Magistrate Judges at that time, but a position of assistant was provided. Thus, I was hired in the position of a full-time assistant but functioned as a law clerk to Judge Longstaff from October of 1977 through my graduation from law school in June of 1979. Upon graduation from law school I became an associate with Mosier, Thomas, Beatty, Dutton, Braun & Staack (now Dutton, Braun, Staack & Hellman, PC), 3151 Brockway Road, Waterloo, IA 50704. I left the Mosier, Thomas firm in 1981 to start the new firm of Humphrey, Haas & Gritzner, 808 5<sup>th</sup> Avenue, Des Moines, IA 50309. I practiced only a few months in 1981 and 1982 with this second firm and departed when the other two partners elected to advertise their services. Then in 1982 I became an associate with the firm of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, PC, 700 Walnut, Suite 1600, Des Moines, IA 50309, where I have practiced to the present time. I became a shareholder in the firm in 1986. In addition to my law practice, in 1980 I was appointed by Iowa Governor Robert D. Ray as a member of the Iowa Board of Parole, where I served through 1982.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Response: Throughout my legal career I have been primarily involved in civil litigation, with most of that work on behalf of defendants. The cases ranged from contract and commercial matters to mass torts. Beginning in the early 1980's I began working on a series of cases arising out of large fires; and in the last ten years my practice has been predominantly focused on large fire

litigation throughout the United States. A secondary area of emphasis has been legal ethics. From 1985 through 1990, I was the primary prosecutor for the Committee on Professional Ethics and Conduct of the Iowa State Bar Association and the Client Security and Attorney Disciplinary Commission of the Iowa Supreme Court. From that work I have become recognized as an authority on legal ethics in Iowa and am frequently called upon to resolve ethical issues for other lawyers.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Response: My typical clients have been large manufacturing companies and other commercial enterprises whose products, services or operations have been in some way connected with the origin or spread of large fires. I have a national practice in defending claims arising out of large and serious fire events. I serve as national counsel to some companies in this area, and am also frequently called upon by excess insurance companies to become involved in the defense of high exposure cases. I am particularly recognized for my work in assembling and presenting the technical defenses to large fire claims. In addition to this work, as noted above, I am recognized as an authority on legal ethics and therefore am frequently contacted by other attorneys with questions or problems in the area of professional responsibility.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Response: I appeared in court quite frequently in the early stages of my career, and I still appear regularly in court. As the cases have grown in scope and complexity in the past ten years, the court appearances have lessened. The preparation time of larger cases will diminish actual court time; and higher risk cases have an increased likelihood of settlement.

2. What percentage of these appearances was in:
  - (a) federal courts;

- (b) state courts of record;
- (c) other courts.

Response: Greater than fifty percent of my cases have been in federal courts. The remainder of the cases would have been in state courts. The exception to this would have been the period of time in which I prosecuted disciplinary cases, where well over one hundred such cases were presented to the Grievance Commission of the Iowa Supreme Court and eventually to the Iowa Supreme Court.

3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

Response: Other than my work as a law clerk and my service as a lawyer member of the Iowa Board of Parole, all of my professional work has been in civil litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Response: While I have not maintained specific records I believe the number of cases tried would be about 30. Of that number I believe I was sole counsel in 13 cases, chief counsel in 12 and associate counsel in 5. I also tried over 100 cases to the Grievance Commission of the Iowa Supreme Court as the sole counsel.

5. What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

Response: Of the civil cases tried to conclusion approximately 63 percent were jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;

- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response:

1. *Tatz et al. v. B.F. Goodrich, et al.*, Law No. 37-21553, Iowa District Court for Polk County.  
Summary: This was a product liability case arising out of a fire at the Younkers department store in Des Moines, IA, resulting in 11 deaths, several personal injuries and approximately \$16,000,000 in property loss. I was initially assisting another attorney in our office as counsel for Northwestern Bell Telephone Company and Western Electric. The case was settled in advance of trial as to those clients. I was then retained by B.F. Goodrich and The Society of the Plastics Industry to reenter the case on their behalf for trial. There were a large number of corporate defendants, represented by numerous counsel. A group of six lawyers were chosen by the joint defense group to try the case in court, and I was among that trial group. This case involved claims of unusual fire performance characteristics of polyvinyl chloride. The only issue tried was the cause of the fire, which the jury found did involve PVC wire insulation in the Younkers building. Subsequent to that trial all matters were settled, but for one other party which successful obtained a summary judgment.  
 (a) 1982-1983  
 (b) Iowa District Court for Polk County, Judge Richard Strickler.  
 (c) Co-counsel:
  - L. R. Voigts  
 Nyemaster, Goode  
 700 Walnut, Ste. 1600  
 Des Moines, IA 50309  
 (515) 283-3100
  - Charles Cronin  
 Stites & Harbison  
 400 W. Market St., Ste. 1800  
 Louisville, KY 40202  
 (502) 587-3400
  - Carl Henlein  
 Brown, Todd & Heyburn  
 400 W. Market St, 32<sup>nd</sup> Flr.  
 Louisville, KY 40202  
 (502) 589-5400

J. B. Mackaman  
699 Walnut St.  
Des Moines, IA 50309  
(515) 244-2600

Plaintiffs: George LaMarca  
LaMarca & Landry  
1300 50<sup>th</sup> St.  
West Des Moines, IA 50265  
(515) 225-2600

Randy Duncan  
400 Locust St., Ste. 380  
Des Moines, IA 50309  
(515) 288-6440

Others: Robert Van Voren  
220 N. Main, Ste. 600  
Davenport, IA 52801  
(319) 324-3246

Donald Wine  
666 Walnut St., Ste. 2500  
Des Moines, IA 50309  
(515) 288-2500

Theodore Duffield  
729 Insurance Exchange Bldg.  
Des Moines, IA 50309  
(515) 283-2147

H. Richard Smith  
100 Court Ave., Ste. 600  
Des Moines, IA 50309  
(515) 243-7611

James L. Gale  
2800 Two Hannover Sq.  
Raleigh, NC 27601  
(919) 755-8763

2. *Jackson Laboratory v. Kemlite Company, Inc.*, No. CV-90-47-B, United States District Court for the District of Maine.

Summary: This was a product liability case arising out of a fire at the Jackson Laboratory, a genetics research facility at Bar Harbor, Maine. The fire resulted in a claimed loss of \$35,000,000 in facilities and business interruption in regard to the laboratory production of research mice. Our client, Crane Co.,

manufactured a fiberglass reinforced plastic paneling being used in a remodeling at the lab, which was accused of having substantially spread the fire. I was lead defense counsel in the case. The case was tried to a jury which returned a defense verdict.

(a) 1988-1992

(b) United States District Court for the District of Maine, Judge Morton Brody.

(c) Co-counsel: John Ballou  
Deceased

Plaintiffs: Gary Gordon  
333 S. 7<sup>th</sup> St. Ste. 2000  
Minneapolis, MN 55402  
(612) 340-7951

3. *Albright, et al. v. Aeroquip, et al.*, No. B-0146864 in the District Court for Jefferson County Texas, and No. 3:94CV447 in the United States District Court for the Middle District of North Carolina.

Summary: This was a product liability case that arose out of a fire at the Imperial Food Products facility in Hamlet, NC, in which 25 persons were killed and over 70 persons suffered personal injuries. Our client, Crane Co., manufactured paneling used in ceiling tile at the facility. The claim was that our paneling had spread the fire and contributed to the smoke throughout the building. A joint defense group was formed to organize over 40 different corporate defendants. The group of defense counsel elected me to the Steering Committee and as Chairman of the Committee on Expert Witnesses of the defense group. This case was filed in Beaumont, TX, where substantial challenges to jurisdiction of the Texas courts were mounted, leading eventually to the Texas Supreme Court. At one point in the litigation, the matter was removed to federal court in Texas and then transferred to North Carolina. The case was later remanded to the Texas court. The matter was eventually settled before the Texas Supreme Court could rule on the question of Texas jurisdiction over the case.

(a) 1993-1999

(b) District Court for Jefferson County Texas, Judge Gary Sanderson; United States District Court for the Middle District of North Carolina, Judge Woodrow Tilly; United States District Court for the Eastern District of Texas, Judge Howell C. Cobb.

(c) Co-counsel: James L. Gale  
2800 Two Hannover Sq.  
Raleigh, NC 27601  
(919) 755-8763

John Bissell



595 Orleans St.  
Beaumont, TX 77701  
(409) 981-1000

Plaintiffs: Mitchell Toups  
P.O. Box 350  
Beaumont, TX 77704  
(409) 838-0101

Others: (Only very active lawyers listed)

Michael King  
150 N. Michigan Ave., Ste. 2500  
Chicago, IL 60601  
(312) 558-1000

Michael Hughes  
800 Bank One Center  
Superior Ave. East  
Cleveland, OH 44114  
(216) 566-8200

Winston Miller  
Brown, Todd & Heyburn  
400 W. Market St., 32<sup>nd</sup> Flr.  
Louisville, KY 40202  
(502) 589-5400

Brian F. Toohey  
North Point, 901 Lakeside Ave.  
Cleveland, OH 44114  
(216) 586-7246

4. *Arthur v. The Supreme Court of Iowa*, No. 88-1340-B, in the United States District Court for the Southern District of Iowa.

Summary: Three Minnesota lawyers attempted to gain admission to the Iowa bar on motion, without making an adequate showing of a bona fide intention to open an office for the practice of law in Iowa, as required by Supreme Court rules. When the Iowa Supreme Court denied their admission they brought this action under 42 U.S.C. §1983, naming both the court and each of the individual nine justices of the court. I was retained to defend the individual justices. We filed a successful Motion to Dismiss on grounds of issue and claim preclusion and an impermissible collateral attack on a matter within the purview of the Iowa Supreme Court.

(a) 1988-1989

(b) United States District Court for the Southern District of Iowa, Judge Harold D. Vietor.

(c) Plaintiff counsel: Judge Mark W. Bennett  
Federal Building  
Sioux City, IA 51102  
(712) 233-3909

Other Counsel: Elizabeth M. Osenbaugh  
Deputy Attorney General  
(Deceased)

5. *James Curtis, et al. v. Granite State Insurance Company*, No. 85-807-B, in the United States District Court for the Southern District of Iowa.  
Summary: This was an action in which the Plaintiff claimed the Defendant insurance company had committed bad faith in failing to settle a claim on the Plaintiff's business resulting from a fire. The carrier had argued the fire was intentionally set by the insured. The court dismissed the claim for punitive damages. The jury found the claim should be paid. I was the sole defense counsel for Granite State Insurance.  
(a) 1985-1988  
(b) United States District Court for the Southern District of Iowa, Judge Harold D. Vietor.  
(c) Plaintiffs' Counsel: Keith E. Uhl  
3103 Elmwood Dr.  
Des Moines, IA 50312  
(515) 255-8082
6. *First National Bank of West Des Moines v. American Standard, Inc.*, No. 87-130-B, United States District Court for the Southern District of Iowa.  
Summary: I was the lead defense counsel for American Standard, d/b/a The Trane Company, defending a claim that a Trane heater had caused a fire which destroyed the Plaintiff bank. The jury returned a verdict for the Defendant.  
(a) 1987-1988  
(b) United States District Court for the Southern District of Iowa, Judge William C. Stuart.  
(c) Plaintiff's Counsel: Steven K. Scharnberg  
604 Locust St, 4<sup>th</sup> Flr.  
Des Moines, IA 50309  
(515) 288-0145
7. *Mercer v. Gerry Baby Products Company*, No. 3-93-CV-10168, in the United States District Court for the Southern District of Iowa.  
Summary: This was a product liability action arising out of a fire in which one child died and another child

was severely burned. My client was the Gerry Baby Products Company, manufacturer of a baby monitor device that was alleged to have caused the fire. After extensive discovery I settled the case as to the Gerry Baby Products Company, and then represented the company in a national recall campaign concerning the monitor. The case went on to trial and a large verdict against a smoke detector manufacturer.

(a) 1993-1996

(b) United States District Court for the Southern District of Iowa, Judge Charles Wolle, with the settlement conference conducted by Senior Judge William C. Stuart.

(c) Plaintiffs' counsel: James L. Fetterly  
2800 LaSalle Plaza  
800 LaSalle Ave.  
Minneapolis, MN 55402  
(612) 349-8500

John O. Moeller  
601 Brady St., Ste. 303  
Davenport, IA 52803  
(319) 323-3014

Other Counsel: Michael Bush  
5505 Victoria Ave.  
Davenport, IA 52807  
(319) 344-4900

John Egan  
100 Charles River Plaza  
Boston, MA 02114  
(617) 973-6226

Roger Lathrop  
600 Union Arcade Bldg.  
111 East Third St.  
Davenport, IA 52801  
(319) 326-4491

Stuart Lefstein  
P.O. Box 3250  
Rock Island, IL 61204  
(309) 788-5661

8. *Midwest Home Distributors v. DOMCO Industries LTD and Onthank Co*, LA 24409, Iowa District Court for Linn County.

Summary: This was a commercial interference and contract case involving distributorship for vinyl floor covering in a section of the midwest. My client,

Onthank Co., had obtained the distributor position to the exclusion of the Plaintiff. The jury returned a defense verdict for my client, but awarded a large verdict for the Plaintiff against DOMCO.

(a) 1994-1996

(b) Iowa District Court for Linn County, Judge William Eads.

(c) Plaintiffs' Counsel: Robert Houghton  
500 Firststar Bank Bldg.  
Cedar Rapids, IA 52406  
(319) 365-9461

Other Counsel: Stephen J. Holtman  
115 Third St. SE, Ste. 1200  
Cedar Rapids, IA 52401  
(319) 366-7641

9. *Ritzert v. Salisbury Chemicals, Inc.*, No. 26121-0195 in the Iowa District Court for Floyd County.

Summary: An accidental release of hydrogen chloride from storage facilities for my client, Salisbury Chemicals, exposed Mr. Ritzert to the acid effects of the vapor. This was a case by Mr. Ritzert and his wife for his injuries and her loss of consortium. In this case of a large chemical company versus an injured individual, the jury returned a verdict finding Mr. Ritzert to have been primarily at fault for his injuries. Since the consortium claim is not derivative under Iowa law, Mrs. Ritzert recovered a small amount.

(a) 1995-1997

(b) Iowa District Court for Floyd County, Judge Bryan H. McKinley.

(c) Plaintiffs' Counsel: H. P. Folkers  
23 Third St. NW, Ste. 200  
Mason City, IA 50401  
(641) 423-4843

Steve VandenBerg  
200 N. Adams  
Mason City, IA 50401  
(641) 424-8143

10. *Nordine v. Iowa Lutheran Hospital, et al.*, No. 88-1600A, United States District Court for the Southern District of Iowa.

Summary: This antitrust claim arose out of disciplinary action against a psychiatrist by the medical staff of Iowa Lutheran Hospital and Fairview Hospital of Minnesota. I defended the hospitals in the case proving the absence of any antitrust claim, and the presence of professional misconduct on the part of the

doctor. The case was dismissed as a matter of law at the close of the Plaintiff's case during the trial.

(a) 1989-1994

(b) United States District Court for the Southern district of Iowa, Judge Charles Wollé; and the United States Court of Appeals for the Eighth Circuit (No. 93-1582SIDM).

(c) Plaintiff's Counsel: Michael Sellers  
1501 42<sup>nd</sup> St., Ste. 380  
West Des Moines, IA 50266  
(515) 221-0111

Other Counsel: David L. Brown  
8<sup>th</sup> Flr. 218 6<sup>th</sup> Ave.  
Des Moines, IA 50309  
(515) 244-2141

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Response: Essentially all of my major work has been in matters which progressed to trial or were settled during the litigation process. As national counsel for a manufacturer of housing I directed litigation efforts in multiple death fires and explosions in six states. I was personally involved in the discovery, case development, and legal strategy in all of these cases which were settled on very favorable terms for my client. For a manufacturer of electrical equipment I was lead counsel on a series of cases in five states ranging from wrongful death and serious personal injury to property damage, bringing all of these cases to favorable settlement resolution. I also represented this electrical manufacturer in connection with a nation-wide recall of one of its products, in conjunction with the Consumer Product Safety Commission. I am currently one of the lead defense counsel in an estimated \$100,000,000.00 fire loss in Arizona, and an estimated \$35,000,000.00 fire loss in Indiana. And, I am one of the lead defense counsel in a case in Kansas where it is claimed escaping gas from an underground storage facility has imperiled an entire city. In each of these current cases I am directly involved in investigation, case development, discovery and legal strategy. I was involved in a large international trade secret and commercial interference case in which I spent time in India, coordinating with counsel and proceedings there while directing the litigation in the United States; but, I eventually had to withdraw from this

case having become a witness to conduct of opposing counsel.

Further, I would note my work in the area of legal ethics. As indicated previously I prosecuted over 100 professional disciplinary cases. I also advised the Committee on Professional Ethics and Conduct on ethics opinions and became a recognized authority on legal ethics. I have lectured frequently on this topic, and I chaired the special committee formed by the Board of Governors of the Iowa State Bar Association to examine the question of converting the Iowa legal ethics structure from the Model Code to the Model Rules of Professional Conduct. I also serve as an expert witness on professional responsibility.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Response: The only such benefit I would anticipate would be from the buy-out provisions (deferred compensation) for my law firm. Under current valuation the amount of \$136,000.00 would be paid out over a period of three years, if we proceed pursuant to my employment contract with the Professional Corporation. The firm may elect to a shorter payment period to avoid the continuing financial connection. At my departure from the firm I would be entitled to approximately \$5,000.00 for my share of stock in the professional corporation. One large class action case which has been pending during my time with the firm and would likely be resolved after my departure, may result in a payment of my share of the proceeds during my time with the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Response: I would promptly review cases upon assignment to determine if any significant potential conflict exists with the subject matter or the parties. In the event I determine there is a clear conflict, I would exchange the case with a similar matter from another federal judge. If the conflict is not clear but possible, I would advise the counsel for the parties of my concern and request a response within a short period of time. Should the parties demonstrate a legitimate concern, I would exchange the case even though grounds for disqualification might not exist. I would take care to follow the canons of judicial ethics for the Eighth Circuit Court of Appeals.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Response: I have no such plans.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see the attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Response: I was the chairman of the Republican Central Committee for Black Hawk County, Iowa, during the 1980 election year, and thus responsible for the party effort on behalf of various local and statewide candidates. During the 1986 election campaign I was a member of the campaign committee for United States Senator Charles Grassley, and involved in various campaign activities in support of Senator Grassley. I later became the co-chair of the Grassley Committee, Inc., and was in that capacity in the 1992 campaign. I then became chairman of the Grassley Committee, Inc., through the 1998 campaign and until March 2001. As co-chair of the Committee I was largely involved with planning political strategy and advertising for the campaign. As chairman of the Committee I had the executive responsibility for the general management of the campaign organization as well as the political strategy and advertising. This was always an oversight role in that the organization had professional staff and consultants to perform the operational work.



AO-10 (w)  
Rev. 1/2000FINANCIAL DISCLOSURE REPORT  
Nomination ReportReport required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Critzner, James E.		2. Court or Organization District Court - Iowa Southern	3. Date of Report 07/13/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee		5. Report Type (check type) X Nomination, Date 07/10/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 07/07/2001
7. Chambers or Office Address 700 Walnut, Ste. 1600 Des Moines, IA 50309		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

## I. POSITIONS (Reporting individual only; see pp. 9-13 of instructions.)

☐ NONE (No reportable positions.)

NAME OF ORGANIZATION / ENTITY

1 Attorney/Shareholder Nyemaster, Goode, Voigts, West, Hansell &amp; O'Brien, PC

2

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of instructions.)

DATE

PARTIES AND TERMS

☐ NONE (No reportable agreements.)

1	2001	Nyemaster Law Firm deferred compensation
2	1994	NGMEO Money Purchase Plan retirement plan with law firm
3	1994	NGMEO Profit Sharing Plan retirement plan with law firm

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)
☐ NONE (No reportable non-investment income.)

1			
2	1999	Nyemaster Law Firm	\$251,125
3	2000	Nyemaster Law Firm	\$275,953.00
	2001	Nyemaster Law Firm	\$140,217.59

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gritzner, James E.	07/13/2001

## IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of instructions.)

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1		
2	EXEMPT	
3		
4		
5		
6		
7		

## V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
	EXEMPT		
2			
3			

## VI. LIABILITIES

(Includes those of spouse and dependent children. See pp. 33-35 of instructions.)

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Gritzner, James E.	Date of Report 07/13/2001

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions (Includes those of spouse and dependent children. See pp. 35-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Gateway, Inc. stock		None	J	T	EXEMPT				
2 Maytag Corp stock	A	Dividend	J	T	EXEMPT				
3 McLeod USA stock		None	J	T	EXEMPT				
4 Putnam International Growth Fund	B	Dividend	J	T	EXEMPT				
5 AIM Large Cap Growth Fund		None	J	T	EXEMPT				
6 AIM Emerging Growth Fund	A	Dividend	J	T	EXEMPT				
7 PIMCO Global Innovation Fund		None	J	T	EXEMPT				
8 Janus Fund		None	K	T	EXEMPT				
9 Fidelity Asset Manager Fund	C	Dividend	K	T	EXEMPT				
10 American General Corp stock	D	Dividend	J	T	EXEMPT				
11 Commercial Federal Bank	C	Interest		T	EXEMPT				
12 West Des Moines State Bank	A	Interest		T	EXEMPT				
13									
14									
15									
16									
17									
1 Inco/Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I=\$5,000,001-\$25,000,000; J=\$25,000,001-\$50,000,000; K=\$50,000,001-\$100,000,000; L=\$100,000,001-\$250,000,000; M=\$250,000,001-\$500,000,000; N=\$500,000,001-\$1,000,000,000; O=\$1,000,001-\$5,000,000; P=\$5,000,001-\$25,000,000; Q=\$25,000,001-\$50,000,000; R=\$50,000,001-\$100,000,000; S=\$100,000,001-\$250,000,000; T=\$250,000,001-\$500,000,000; U=\$500,000,001-\$1,000,000,000; V=\$1,000,001-\$5,000,000; W=\$5,000,001-\$25,000,000; X=\$25,000,001-\$50,000,000; Y=\$50,000,001-\$100,000,000; Z=\$100,000,001-\$500,000,000; AA=\$500,000,001-\$1,000,000,000; AB=\$1,000,001-\$5,000,000; AC=\$5,000,001-\$25,000,000; AD=\$25,000,001-\$50,000,000; AE=\$50,000,001-\$100,000,000; AF=\$100,000,001-\$250,000,000; AG=\$250,000,001-\$500,000,000; AH=\$500,000,001-\$1,000,000,000; AI=\$1,000,001-\$5,000,000; AJ=\$5,000,001-\$25,000,000; AK=\$25,000,001-\$50,000,000; AL=\$50,000,001-\$100,000,000; AM=\$100,000,001-\$250,000,000; AN=\$250,000,001-\$500,000,000; AO=\$500,000,001-\$1,000,000,000; AP=\$1,000,001-\$5,000,000; AQ=\$5,000,001-\$25,000,000; AR=\$25,000,001-\$50,000,000; AS=\$50,000,001-\$100,000,000; AT=\$100,000,001-\$250,000,000; AU=\$250,000,001-\$500,000,000; AV=\$500,000,001-\$1,000,000,000; AW=\$1,000,001-\$5,000,000; AX=\$5,000,001-\$25,000,000; AY=\$25,000,001-\$50,000,000; AZ=\$50,000,001-\$100,000,000; BA=\$100,000,001-\$250,000,000; BB=\$250,000,001-\$500,000,000; BC=\$500,000,001-\$1,000,000,000; BD=\$1,000,001-\$5,000,000; BE=\$5,000,001-\$25,000,000; BF=\$25,000,001-\$50,000,000; BG=\$50,000,001-\$100,000,000; BH=\$100,000,001-\$250,000,000; BI=\$250,000,001-\$500,000,000; BJ=\$500,000,001-\$1,000,000,000; BK=\$1,000,001-\$5,000,000; BL=\$5,000,001-\$25,000,000; BM=\$25,000,001-\$50,000,000; BN=\$50,000,001-\$100,000,000; BO=\$100,000,001-\$250,000,000; BP=\$250,000,001-\$500,000,000; BQ=\$500,000,001-\$1,000,000,000; BR=\$1,000,001-\$5,000,000; BS=\$5,000,001-\$25,000,000; BT=\$25,000,001-\$50,000,000; BU=\$50,000,001-\$100,000,000; BV=\$100,000,001-\$250,000,000; BV=\$250,000,001-\$500,000,000; BW=\$500,000,001-\$1,000,000,000; BX=\$1,000,001-\$5,000,000; BY=\$5,000,001-\$25,000,000; BZ=\$25,000,001-\$50,000,000; CA=\$50,000,001-\$100,000,000; CB=\$100,000,001-\$250,000,000; CC=\$250,000,001-\$500,000,000; CD=\$500,000,001-\$1,000,000,000; CE=\$1,000,001-\$5,000,000; CF=\$5,000,001-\$25,000,000; CG=\$25,000,001-\$50,000,000; CH=\$50,000,001-\$100,000,000; CI=\$100,000,001-\$250,000,000; CJ=\$250,000,001-\$500,000,000; CK=\$500,000,001-\$1,000,000,000; CL=\$1,000,001-\$5,000,000; CM=\$5,000,001-\$25,000,000; CN=\$25,000,001-\$50,000,000; CO=\$50,000,001-\$100,000,000; CP=\$100,000,001-\$250,000,000; CQ=\$250,000,001-\$500,000,000; CR=\$500,000,001-\$1,000,000,000; CS=\$1,000,001-\$5,000,000; CT=\$5,000,001-\$25,000,000; CU=\$25,000,001-\$50,000,000; CV=\$50,000,001-\$100,000,000; CW=\$100,000,001-\$250,000,000; CX=\$250,000,001-\$500,000,000; CY=\$500,000,001-\$1,000,000,000; CZ=\$1,000,001-\$5,000,000; DA=\$5,000,001-\$25,000,000; DB=\$25,000,001-\$50,000,000; DC=\$50,000,001-\$100,000,000; DD=\$100,000,001-\$250,000,000; DE=\$250,000,001-\$500,000,000; DF=\$500,000,001-\$1,000,000,000; DG=\$1,000,001-\$5,000,000; DH=\$5,000,001-\$25,000,000; DI=\$25,000,001-\$50,000,000; DJ=\$50,000,001-\$100,000,000; DK=\$100,000,001-\$250,000,000; DL=\$250,000,001-\$500,000,000; DM=\$500,000,001-\$1,000,000,000; DN=\$1,000,001-\$5,000,000; DO=\$5,000,001-\$25,000,000; DP=\$25,000,001-\$50,000,000; DQ=\$50,000,001-\$100,000,000; DR=\$100,000,001-\$250,000,000; DS=\$250,000,001-\$500,000,000; DT=\$500,000,001-\$1,000,000,000; DU=\$1,000,001-\$5,000,000; DV=\$5,000,001-\$25,000,000; DW=\$25,000,001-\$50,000,000; DX=\$50,000,001-\$100,000,000; DY=\$100,000,001-\$250,000,000; DZ=\$250,000,001-\$500,000,000; EA=\$500,000,001-\$1,000,000,000; EB=\$1,000,001-\$5,000,000; EC=\$5,000,001-\$25,000,000; ED=\$25,000,001-\$50,000,000; EE=\$50,000,001-\$100,000,000; EF=\$100,000,001-\$250,000,000; EG=\$250,000,001-\$500,000,000; EH=\$500,000,001-\$1,000,000,000; EI=\$1,000,001-\$5,000,000; EJ=\$5,000,001-\$25,000,000; EK=\$25,000,001-\$50,000,000; EL=\$50,000,001-\$100,000,000; EM=\$100,000,001-\$250,000,000; EN=\$250,000,001-\$500,000,000; EO=\$500,000,001-\$1,000,000,000; EP=\$1,000,001-\$5,000,000; EQ=\$5,000,001-\$25,000,000; ER=\$25,000,001-\$50,000,000; ES=\$50,000,001-\$100,000,000; ET=\$100,000,001-\$250,000,000; EU=\$250,000,001-\$500,000,000; EV=\$500,000,001-\$1,000,000,000; EW=\$1,000,001-\$5,000,000; EX=\$5,000,001-\$25,000,000; EY=\$25,000,001-\$50,000,000; EZ=\$50,000,001-\$100,000,000; FA=\$100,000,001-\$250,000,000; FB=\$250,000,001-\$500,000,000; FC=\$500,000,001-\$1,000,000,000; FD=\$1,000,001-\$5,000,000; FE=\$5,000,001-\$25,000,000; FF=\$25,000,001-\$50,000,000; FG=\$50,000,001-\$100,000,000; FH=\$100,000,001-\$250,000,000; FI=\$250,000,001-\$500,000,000; FJ=\$500,000,001-\$1,000,000,000; FK=\$1,000,001-\$5,000,000; FL=\$5,000,001-\$25,000,000; FM=\$25,000,001-\$50,000,000; FN=\$50,000,001-\$100,000,000; FO=\$100,000,001-\$250,000,000; FP=\$250,000,001-\$500,000,000; FQ=\$500,000,001-\$1,000,000,000; FR=\$1,000,001-\$5,000,000; FS=\$5,000,001-\$25,000,000; FT=\$25,000,001-\$50,000,000; FU=\$50,000,001-\$100,000,000; FV=\$100,000,001-\$250,000,000; FW=\$250,000,001-\$500,000,000; FX=\$500,000,001-\$1,000,000,000; FY=\$1,000,001-\$5,000,000; FZ=\$5,000,001-\$25,000,000; GA=\$25,000,001-\$50,000,000; GB=\$50,000,001-\$100,000,000; GC=\$100,000,001-\$250,000,000; GD=\$250,000,001-\$500,000,000; GE=\$500,000,001-\$1,000,000,000; GF=\$1,000,001-\$5,000,000; GH=\$5,000,001-\$25,000,000; GI=\$25,000,001-\$50,000,000; GJ=\$50,000,001-\$100,000,000; GK=\$100,000,001-\$250,000,000; GL=\$250,000,001-\$500,000,000; GM=\$500,000,001-\$1,000,000,000; GN=\$1,000,001-\$5,000,000; GO=\$5,000,001-\$25,000,000; GP=\$25,000,001-\$50,000,000; GQ=\$50,000,001-\$100,000,000; GR=\$100,000,001-\$250,000,000; GS=\$250,000,001-\$500,000,000; GT=\$500,000,001-\$1,000,000,000; GU=\$1,000,001-\$5,000,000; GV=\$5,000,001-\$25,000,000; GW=\$25,000,001-\$50,000,000; GX=\$50,000,001-\$100,000,000; GY=\$100,000,001-\$250,000,000; GZ=\$250,000,001-\$500,000,000; HA=\$500,000,001-\$1,000,000,000; HB=\$1,000,001-\$5,000,000; HC=\$5,000,001-\$25,000,000; HD=\$25,000,001-\$50,000,000; HE=\$50,000,001-\$100,000,000; HF=\$100,000,001-\$250,000,000; HG=\$250,000,001-\$500,000,000; HH=\$500,000,001-\$1,000,000,000; HI=\$1,000,001-\$5,000,000; HJ=\$5,000,001-\$25,000,000; HK=\$25,000,001-\$50,000,000; HL=\$50,000,001-\$100,000,000; HM=\$100,000,001-\$250,000,000; HN=\$250,000,001-\$500,000,000; HO=\$500,000,001-\$1,000,000,000; HP=\$1,000,001-\$5,000,000; HQ=\$5,000,001-\$25,000,000; HR=\$25,000,001-\$50,000,000; HS=\$50,000,001-\$100,000,000; HT=\$100,000,001-\$250,000,000; HU=\$250,000,001-\$500,000,000; HV=\$500,000,001-\$1,000,000,000; HW=\$1,000,001-\$5,000,000; HX=\$5,000,001-\$25,000,000; HY=\$25,000,001-\$50,000,000; HZ=\$50,000,001-\$100,000,000; IA=\$100,000,001-\$250,000,000; IB=\$250,000,001-\$500,000,000; IC=\$500,000,001-\$1,000,000,000; ID=\$1,000,001-\$5,000,000; IE=\$5,000,001-\$25,000,000; IF=\$25,000,001-\$50,000,000; IG=\$50,000,001-\$100,000,000; IH=\$100,000,001-\$250,000,000; II=\$250,000,001-\$500,000,000; IJ=\$500,000,001-\$1,000,000,000; IK=\$1,000,001-\$5,000,000; IL=\$5,000,001-\$25,000,000; IM=\$25,000,001-\$50,000,000; IN=\$50,000,001-\$100,000,000; IO=\$100,000,001-\$250,000,000; IP=\$250,000,001-\$500,000,000; IQ=\$500,000,001-\$1,000,000,000; IR=\$1,000,001-\$5,000,000; IS=\$5,000,001-\$25,000,000; IT=\$25,000,001-\$50,000,000; IU=\$50,000,001-\$100,000,000; IV=\$100,000,001-\$250,000,000; IW=\$250,000,001-\$500,000,000; IX=\$500,000,001-\$1,000,000,000; IY=\$1,000,001-\$5,000,000; IZ=\$5,000,001-\$25,000,000; JA=\$25,000,001-\$50,000,000; JB=\$50,000,001-\$100,000,000; JC=\$100,000,001-\$250,000,000; JD=\$250,000,001-\$500,000,000; JE=\$500,000,001-\$1,000,000,000; JF=\$1,000,001-\$5,000,000; JG=\$5,000,001-\$25,000,000; JH=\$25,000,001-\$50,000,000; JI=\$50,000,001-\$100,000,000; JJ=\$100,000,001-\$250,000,000; JK=\$250,000,001-\$500,000,000; JL=\$500,000,001-\$1,000,000,000; JM=\$1,000,001-\$5,000,000; JN=\$5,000,001-\$25,000,000; JO=\$25,000,001-\$50,000,000; JP=\$50,000,001-\$100,000,000; JQ=\$100,000,001-\$250,000,000; JR=\$250,000,001-\$500,000,000; JS=\$500,000,001-\$1,000,000,000; JT=\$1,000,001-\$5,000,000; JU=\$5,000,001-\$25,000,000; JV=\$25,000,001-\$50,000,000; JW=\$50,000,001-\$100,000,000; JX=\$100,000,001-\$250,000,000; JY=\$250,000,001-\$500,000,000; JZ=\$500,000,001-\$1,000,000,000; KA=\$1,000,001-\$5,000,000; KB=\$5,000,001-\$25,000,000; KC=\$25,000,001-\$50,000,000; KD=\$50,000,001-\$100,000,000; KE=\$100,000,001-\$250,000,000; KF=\$250,000,001-\$500,000,000; KG=\$500,000,001-\$1,000,000,000; KH=\$1,000,001-\$5,000,000; KI=\$5,000,001-\$25,000,000; KJ=\$25,000,001-\$50,000,000; KK=\$50,000,001-\$100,000,000; KL=\$100,000,001-\$250,000,000; KM=\$250,000,001-\$500,000,000; KN=\$500,000,001-\$1,000,000,000; KO=\$1,000,001-\$5,000,000; KP=\$5,000,001-\$25,000,000; KQ=\$25,000,001-\$50,000,000; KR=\$50,000,001-\$100,000,000; KS=\$100,000,001-\$250,000,000; KT=\$250,000,001-\$500,000,000; KU=\$500,000,001-\$1,000,000,000; KV=\$1,000,001-\$5,000,000; KW=\$5,000,001-\$25,000,000; KX=\$25,000,001-\$50,000,000; KY=\$50,000,001-\$100,000,000; KZ=\$100,000,001-\$250,000,000; LA=\$250,000,001-\$500,000,000; LB=\$500,000,001-\$1,000,000,000; LC=\$1,000,001-\$5,000,000; LD=\$5,000,001-\$25,000,000; LE=\$25,000,001-\$50,000,000; LF=\$50,000,001-\$100,000,000; LG=\$100,000,001-\$250,000,000; LH=\$250,000,001-\$500,000,000; LI=\$500,000,001-\$1,000,000,000; LJ=\$1,000,001-\$5,000,000; LK=\$5,000,001-\$25,000,000; LL=\$25,000,001-\$50,000,000; LM=\$50,000,001-\$100,000,000; LN=\$100,000,001-\$250,000,000; LO=\$250,000,001-\$500,000,000; LP=\$500,000,001-\$1,000,000,000; LQ=\$1,000,001-\$5,000,000; LR=\$5,000,001-\$25,000,000; LS=\$25,000,001-\$50,000,000; LT=\$50,000,001-\$100,000,000; LU=\$100,000,001-\$250,000,000; LV=\$250,000,001-\$500,000,000; LW=\$500,000,001-\$1,000,000,000; LX=\$1,000,001-\$5,000,000; LY=\$5,000,001-\$25,000,000; LZ=\$25,000,001-\$50,000,000; MA=\$50,000,001-\$100,000,000; MB=\$100,000,001-\$250,000,000; MC=\$250,000,001-\$500,000,000; MD=\$500,000,001-\$1,000,000,000; ME=\$1,000,001-\$5,000,000; MF=\$5,000,001-\$25,000,000; MG=\$25,000,001-\$50,000,000; MH=\$50,000,001-\$100,000,000; MI=\$100,000,001-\$250,000,000; MJ=\$250,000,001-\$500,000,000; MK=\$500,000,001-\$1,000,000,000; ML=\$1,000,001-\$5,000,000; MN=\$5,000,001-\$25,000,000; MO=\$25,000,001-\$50,000,000; MP=\$50,000,001-\$100,000,000; MQ=\$100,000,001-\$250,000,000; MR=\$250,000,001-\$500,000,000; MS=\$500,000,001-\$1,000,000,000; MT=\$1,000,001-\$5,000,000; MU=\$5,000,001-\$25,000,000; MV=\$25,000,001-\$50,000,000; MW=\$50,000,001-\$100,000,000; MX=\$100,000,001-\$250,000,000; MY=\$250,000,001-\$500,000,000; MZ=\$500,000,001-\$1,000,000,000; NA=\$1,000,001-\$5,000,000; NB=\$5,000,001-\$25,000,000; NC=\$25,000,001-\$50,000,000; ND=\$50,000,001-\$100,000,000; NE=\$100,000,001-\$250,000,000; NF=\$250,000,001-\$500,000,000; NG=\$500,000,001-\$1,000,000,000; NH=\$1,000,001-\$5,000,000; NI=\$5,000,001-\$25,000,000; NJ=\$25,000,001-\$50,000,000; NK=\$50,000,001-\$100,000,000; NL=\$100,000,001-\$250,000,000; NM=\$250,000,001-\$500,000,000; NO=\$500,000,001-\$1,000,000,000; NP=\$1,000,001-\$5,000,000; NQ=\$5,000,001-\$25,000,000; NR=\$25,000,001-\$50,000,000; NS=\$50,000,001-\$100,000,000; NT=\$100,000,001-\$250,000,000; NU=\$250,000,001-\$500,000,000; NV=\$500,000,001-\$1,000,000,000; NW=\$1,000,001-\$5,000,000; NX=\$5,000,001-\$25,000,000; NY=\$25,000,001-\$50,000,000; NZ=\$50,000,001-\$100,000,000; OA=\$100,000,001-\$250,000,000; OB=\$250,000,001-\$500,000,000; OC=\$500,000,001-\$1,000,000,000; OD=\$1,000,001-\$5,000,000; OE=\$5,000,001-\$25,000,000; OF=\$25,000,001-\$50,000,000; OG=\$50,000,001-\$100,000,000; OH=\$100,000,001-\$250,000,000; OI=\$250,000,001-\$500,000,000; OJ=\$500,000,001-\$1,000,000,000; OK=\$1,000,001-\$5,000,000; OL=\$5,000,001-\$25,000,000; OM=\$25,000,001-\$50,000,000; ON=\$50,000,001-\$100,000,000; OO=\$100,000,001-\$250,000,000; OP=\$250,000,001-\$500,000,000; OQ=\$500,000,001-\$1,000,000,000; OR=\$1,000,001-\$5,000,000; OS=\$5,000,001-\$25,000,000; OT=\$25,000,001-\$50,000,000; OU=\$50,000,001-\$100,000,000; OV=\$100,000,001-\$250,000,000; OW=\$250,000,001-\$500,000,000; OX=\$500,000,001-\$1,000,000,000; OY=\$1,000,001-\$5,000,000; OZ=\$5,000,001-\$25,000,000; PA=\$25,000,001-\$50,000,000; PB=\$50,000,001-\$100,000,000; PC=\$100,000,001-\$250,000,000; PD=\$250,000,001-\$500,000,000; PE=\$500,000,001-\$1,000,000,000; PF=\$1,000,001-\$5,000,000; PG=\$5,000,001-\$25,000,000; PH=\$25,000,001-\$50,000,000; PI=\$50,000,001-\$100,000,000									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gritzner, James E.	07/13/2001

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gritzner, James E.	07/13/2001

## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 2. AGREEMENTS (cont'd.)

a	Date	Parties and Terms
4	2001	Nysmaster Law Firm employment contract repurchase of share of stock

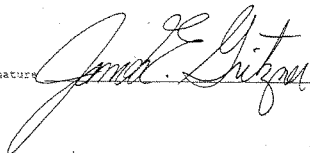
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gritzner, James E.	07/13/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 4, section 501 et. seq., 5 U.S.C. 7253 and Judicial Conference regulations.

Signature



Date

7/13/01

## Note:

Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	17	633 89	Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule	81	303 67	Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule		
Real estate owned-add schedule	410	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	145	000 00			
Cash value-life insurance					
Other assets itemize:					
NGMEO Money Purchase Plan	220	809 49			
NGMEO Profit Sharing Plan	220	397 83			
Firm Deferred Compensation	136	000 00	Total liabilities		0
Firm Stock	5	000 00	Net Worth	1236	144 80
Total Assets	1236	144 80	Total liabilities and net worth	1236	144 80
CONTINGENT LIABILITIES None			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	No	
On leases or contracts			Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

## Schedules to Financial Statement

Listed Securities

Gateway Inc.	3,548.00
Maytag Corp.	3,460.00
McLeod USA Inc.	1,250.00
Putnam International Growth Fund	6,251.00
AIM Large Cap Growth Fund	7,593.00
AIM Emerging Grown Fund	5,210.00
PIMCO Global Innovation Fund	5,727.00
Janus Fund	31,017.95
Fidelity Asset Manager Fund	<u>17,246.72</u>
	\$81,303.67

Real Estate Owned

West Des Moines, IA	\$410,000.00
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## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Response: My primary work has been with the Alliance for Arts and Understanding, a non-profit organization dedicated to improvement of international relations through artistic endeavors. This organization has aided financially threatened musical artists and artistic organizations in several impoverished countries of the world. I have been a Board member and served as Chairman of the Board for several years, amounting to hundreds of hours of work. While my travel makes some of this activity difficult, our firm has made the financial commitment to make several lawyers available to support the Volunteer Lawyers Project, contributing thousands of hours of time on behalf of the firm.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Response: I am not aware of any such discrimination in any organization in which I have been a member.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Response: There is no selection commission in this jurisdiction. Upon encouragement from a number of sources, I advised Senator Charles E. Grassley of my interest in the appointment. Senator Grassley appointed an informal committee of three respected Iowa attorneys who reviewed

candidate materials, conducted interviews of the various candidates, and made a recommendation to Senator Grassley of what they viewed as the top three candidates. It is my understanding Senator Grassley further considered this recommendation, perhaps with other resources, and then recommended the list of three candidates for review by the Office of White House Counsel. I was interviewed by several attorneys in the Office of White House Counsel. I responded to a number of questionnaire items and was interviewed for background information. I was nominated on July 10, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

Response: No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.



Response: The analysis of this general issue necessarily has its genesis in the basic structure of the federal system and the Constitutional and statutory limits on federal court jurisdiction. The separation of powers not only defines the roles of the executive, legislative and judicial branches, but also limits those roles from intrusion upon one another. Article III of the United States Constitution vests the judicial power in the judicial branch with the limitation that this power be exercised over specific cases or controversies. The Supreme Court has repeatedly observed this places substantial constitutional limits on the power of the courts. At bottom this limitation precludes advisory opinions.

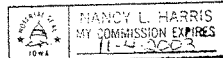
Judicial power has been further narrowed and defined by concepts of standing, ripeness, mootness, and the political question doctrine. Only when issues and parties are properly before the federal courts, do we satisfy the concept of justiciability. The exercise of judicial power must not offend other provisions of the Constitution, nor run contrary to statutory definitions of federal jurisdiction which are consistent with Constitutional limitations. Various other limitations upon the exercise of judicial power have been recognized by the Supreme Court and govern the exercise of that power in the lower federal courts. This essential structure sets the dimensions of the judicial response to all matters.

#### AFFIDAVIT

I, James Edward Gritzner, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/13/01  
(DATE)

*James E. Gritzner*  
(NAME)



*Nancy L. Harris*  
(NOTARY)

Senator CANTWELL. Mr. Blackburn, would you like to introduce anyone?

**STATEMENT OF ROBERT BLACKBURN, OF COLORADO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO**

Judge BLACKBURN. I would. Before that, I would like to take this opportunity to personally thank you and Senator Leahy, Senator Grassley and Kyl and other members of the Senate Judiciary Committee for affording us this unique and privileged opportunity, after what has been certainly a humbling, sobering, and deliberative process.

I am pleased to have with me today my wife and partner of now near 25 years, Connie Blackburn. Connie was born and raised for a time in Iowa and she wanted me to go on the record for her in support of the two Iowa nominees, as well. [Laughter.]

Judge BLACKBURN. Seated with her is my father, Ed Blackburn, who is more than just my father, certainly a friend, and for the last 10 years he and I raised beautiful registered Black Angus cattle together and survived economically to talk about it. He is here.

Deeper in the audience is a friend and former colleague of mine, Scott R. Foncannon, Esquire, and his daughter, Sarah. Until recently, Scott practiced law in southeastern Colorado and appeared frequently before my court. He has recently transitioned with his family to the State of Maryland, and I can truly say that if all judges had the kind of attorney that Mr. Foncannon is before them, they would indeed be blessed and their jobs made much easier.

[The biographical information of Judge Blackburn follows:]

RESPONSES OF  
THE HON. ROBERT E. BLACKBURN  
TO THE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES  
(For The United States Senate Committee on The Judiciary)

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
1. My full name is Robert Edward Blackburn. I formally use the name, Robert E. Blackburn. I generally use and prefer the name, Bob Blackburn.
2. Address: List current place of residence and office address(es).  
2. I reside in Las Animas, Colorado 81054. As a state court district judge, I have offices in the following three county courthouses: Otero County Courthouse, Room 205, 13 West Third Street, La Junta, Colorado 81050 (principal office); Bent County Courthouse, Las Animas, Colorado 81054; and Crowley County Courthouse, Ordway, Colorado 81063.
3. Date and place of birth.  
3. I was born April 12, 1950, at St. Anthony's Hospital in Lakewood, Colorado.
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
4. My wife is Constance (Connie) Lee Blackburn, formerly Constance Lee Mack. She is a homemaker and provides daycare in our home for our granddaughter.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
5. a. I have a Bachelor of Arts degree from Western State College in Gunnison, Colorado, which I attended from September 1968 to May 1972 (I graduated in May 1972); and  
b. I have a Juris Doctor degree from the University of Colorado Law School in Boulder, Colorado, which I attended from August 1972 to December 1974 (I graduated December 23, 1974).
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
6. a. I was a proprietor in Blackburn Angus, a registered Black Angus cattle ranch of Las Animas, Colorado, from February 7, 1991, until June 16, 2001;  
b. I was the judicial member of the board of directors of Tri-County Community Corrections, a statutorily created local community corrections project, from September 1992 until approximately June 1995;

- c. I was a partner in Tradition Associates, a partnership formed to market the Black Angus bull, Hoff Tradition SC 456, from April 1994, until December 1996;
- d. I was appointed Town Attorney for the Town of Kim, Colorado, and served from approximately November 1976 until July 1988;
- e. I was appointed Deputy District Attorney for the Sixteenth Judicial District and served from approximately 1980 until approximately 1986;
- f. I was appointed County Attorney for Bent County Colorado, and served from January 1980 until July 1988; and
- g. I was appointed Municipal Judge for the Town of Kim, Colorado, and served from approximately 1985 until July 1988.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

7. I have no military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

8. While attending Western State College in Gunnison, Colorado, I was awarded an academic scholarship and was recognized as the top arts and humanities student from 1968 to 1972. I served as Western State College student-body vice-president 1970-1971 and student-body president 1971-1972.

9. Bar Associations: List all bar associations, legal or judicial-related committees of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

- 9.
  - a. I have been a member of the Colorado Bar Association since 1975;
  - b. I have been a member of the Sixteenth Judicial Bar Association since 1975;
    - 1. I was secretary in 1981;
    - 2. I was vice-president in 1982; and
    - 3. I was president in 1983
  - c. I have been a member of the American Bar Association most recently since July 2000;
  - d. I have been a member of the Colorado District Judges' Association since July 1988, serving on the Executive Committee since October 1999;
  - e. I was a member of the Colorado Association of School Attorneys from approximately 1980 until July 1988;
  - f. I was a member of the Colorado County Attorneys' Association from approximately January 1980 until July 1988, serving on the Executive Board from approximately November 1986 until July 1988.
  - g. I have been a member of the Sixteenth Judicial District SB-94 (Senate Bill-94) Committee since approximately February 1998, serving as chairman of the board since approximately September 1998;
  - h. I have been a member of the Colorado Supreme Court's Ad Hoc Probate Committee since August 1998; and

i. I have been a member of the Colorado Supreme Court's Magistrates' Rules' Committee since approximately December 1998.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

10. None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

11. a. I was admitted to practice in the state courts of Colorado on May 19, 1975; and

b. I was admitted to practice in the U.S. District Court for the District of Colorado on May 19, 1975.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

12. None. (However, I have made periodic seminar presentations for purposes of continuing legal education concerning legal topics of interest [e.g., evidence, ethics, motions' practice, etc.] to groups of Colorado attorneys, e.g., the Colorado County Attorneys' Association. [See attached outlines])

13. Health: What is the present state of your health? List the date of your last physical examination.

13. The current state of my health is good. My last physical examination was June 27, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

14. a. I was appointed Municipal Judge for the Town of Kim, Colorado, and served from approximately 1985 until July 1988. The municipal court is a court of limited jurisdiction handling violations of town ordinances; and

b. I was appointed to the District Court bench for the Sixteenth Judicial District of the State of Colorado on July 25, 1988. The district court is a trial court of general jurisdiction. I continue to serve on that court. The Sixteenth Judicial District is comprised of Bent, Crowley, and Otero Counties.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of

your substantive or procedural rulings; and (3) citations for significant opinions of federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

15. (1). Citations for the ten most significant opinions I have written include:

1. *Shelton v. Fowler School Dist. R-4J*, District Court, Otero County, Colorado, case 89 CV 104 "Findings of Fact, Conclusions of Law, and Judgment" 8/9/90 (See attached opinion);

2. *Wilkerson v. East Otero School Dist. R-1, et al.*, District Court, Otero County, Colorado, case 89 CV 100 "Ruling on Defendants' Motion to Dismiss" 2/21/90 (See attached opinion);

3. *Estate of Daryl Edmunds, et al. v. State Farm*, District Court, Otero County, Colorado, case 93 CV 7 "Findings of Fact, Conclusions of Law, and Judgment" 12/22/94 (See attached opinion);

4. *Professional Bldg. Movers, Inc. v. Ballintine, et al.*, District Court, Bent County, Colorado, case 96 CV 35 "Findings of Fact, Conclusions of Law, Orders and Judgment" 9/5/97 (See attached opinion);

5. *In Re Whiteswan*, District Court, Otero County, Colorado, case 99 JA 2 "Order Denying Step-parent Petition for Adoption" 6/22/99 (See attached opinion);

6. *In Re Marriage of Martin*, District Court, Otero County, Colorado, case 97 DR 82 "Decree of Dissolution of Marriage and Final Orders" 3/17/00 (See attached opinion);

7. *People in the Interest of D.C.*, District Court, Otero County, Colorado, case 88 JV 38 "Findings of Fact, Conclusions of Law, Custody and Related Orders" 8/5/91 (See attached opinion);

8. *In Re Marriage of Bamber*, District Court, Otero County, Colorado, case 99 DR 8 "Findings of Fact, Conclusions of Law, Contempt Judgment, and Sentence" 9/6/00 (See attached opinion);

9. *People v. Sojka*, District Court, Crowley County, Colorado, case 92 CR 27 "Order Granting Defendant's Motion For New Trial" 12/5/97 (See attached opinion); and

10. *People v. Quintana*, District Court, Bent County, Colorado, case 91 CR 7 "Order Denying Defendant's Crim. P. 35(c) Motion For New Trial" 9/25/97 (See attached opinion).

(2) In approximately 100 appeals over 13 years, I have only been successfully reversed once. In *People v. Archuleta*, District Court, Otero County, Colorado, case 95 CR 109/ 97 CA 0014 (Colo.App. 1998), the court of appeals ruled that I abused my discretion by failing to replace a juror during trial with an alternate juror when the juror belatedly disclosed that he had been acquainted with the victim and a defense witness with whom the juror had argued about an unrelated relationship between the witness and the juror's ex-wife, notwithstanding the fact that in mitigation I barred the testimony of the problematic defense witness pursuant to CRE 403.

(3). Citations for significant opinions of federal or state constitutional issues:

1. *People v. Quintana*, District Court, Bent County, Colorado, case 91 CR 7 “Order Denying Defendant’s Crim. P. 35(c) Motion For New Trial” 9/25/97 (See attached opinion);
2. *People v. Sojka*, District Court, Crowley County, Colorado, case 92 CR 27 “Order Granting Defendant’s Motion For New Trial” 12/5/97 (See attached opinion);
3. *People v. Vasquez*, District Court, Otero County, Colorado, case 95 CR 147 “Order Denying Defendant’s Motion to Dismiss” 5/28/96 (See attached opinion);
4. *People v. Vasquez*, District Court, Otero County, Colorado, case 95 CR 147 “Order Denying Defendant’s Motions to Suppress” 5/28/96 (See attached opinion);
5. *People v. Garcia*, District Court, Otero County, Colorado, case 92 CR 18 “Ruling Re People’s CRE 404(b) Proffer and Re Defendant’s Claim of Constitutional Bar to Alleged Similar Transaction Evidence” 10/13/92 (See attached opinion);
6. *People v. Jackson*, District Court, Arapahoe County, Colorado, case 92 CR 371 “Ruling on Defendant’s Motion to Suppress” 9/3/92 (See attached opinion);
7. *People v. Carrillo*, District Court, Otero County, Colorado, cases 88 CR 134, 175 & 176 “Order Re Defendant’s Motion for Discovery of Prior Criminal History and Mental Health Records of the State’s Witness, Dennis Cochran” 5/12/89 (See attached opinion);
8. *People v. Geringer*, District Court, Bent County, Colorado, case 91 CR 5 “Findings of Fact, Conclusions of Law, and Order Reiterating Court’s Denial of Defendant’s Motion to Suppress” 11/2/93 (See attached opinion); and
9. *Montanez, et al. v. Stork, et al.*, District Court, Otero County, Colorado, case 90 CV 24 “Order Granting Defendants’ (Stork and Eberly) Motion for Summary Judgment” 8/15/91 (See attached opinion).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

16. I was elected chairman of the Bent County Republican Party and served for approximately one year in approximately 1980;

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
    1. **I have not served as a law clerk.**
  2. whether you practiced alone, and if so, the addresses and dates;
    2. **I was a sole practitioner from January 1980 until July 25, 1988, when I began my tenure as a state court district judge.**

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;
  3. a. I was a partner, together with Oakley Wade (deceased), in the law firm of Wade & Blackburn, 427 Sixth Street, Las Animas, Colorado 81054, from May 19, 1975, when I was admitted to the practice of law in Colorado, until December 1980;
  - b. I was the County Attorney for Bent County, Colorado, from January 1980 until July 1988;
  - c. I was legal counsel for the Board of Education of Las Animas School District RE-1 in Las Animas, Colorado, from approximately 1976 until July 1988.
  - d. I was legal counsel for the Board of Education of Kim School District R-88 in Kim, Colorado, from approximately November 1976 until July 1988.
- b.
  1. what has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
    1. During the time I was in private practice from May 19, 1975, until July 25, 1988, when I assumed my duties as a state court district judge, I handled all types of cases and legal matters (except admiralty and patent), including criminal, civil, and administrative cases. In the course of my practice, I also prepared individual, partnership, corporate, estate, and fiduciary income tax returns, handled bankruptcy matters for both debtors and creditors, and handled water matters.
  2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
    2. I was privileged to represent school districts, boards of county commissioners, departments of social services, special improvement districts, mutual irrigation companies, banks, corporations, public officials, and private citizens in myriad legal contexts.
- c.
  1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
    1. I appeared in court frequently.
  2. What percentage of these appearances was in:
    - (a) federal courts;
    - (a) 5%



- (b) state courts of record;
- (b) 90%
- (c) other courts.
- (c) 5%

3. What percentage of your litigation was:

- (a) civil;
- (a) 80%
- (b) criminal.
- (b) 20%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

- 4. a. During the time I was in private practice from May 19, 1975, until July 25, 1988, when I assumed my duties as a state court district judge, I tried approximately 100 cases as sole counsel to verdict or judgment; and
- b. As a state court district judge since July 25, 1988, I have presided in over 110 jury trials, myriad bench trials, and countless hearings.

5. What percentage of these trials was (private practice):

- (a) jury;
- (a) 5%
- (b) non-jury.
- (b) 95%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

18. The ten most significant litigated matters that I personally handled while in private practice from May 19, 1975 until July 25, 1988 are as follows:

- 1. *People v. Brookshire*, District Court, Prowers County, Colorado, case 79 CR 5. From 2/20/79 until 7/17/84, I represented the defendant in this criminal case in which he was charged with the felony offenses of Kidnapping, Theft, Aggravated Motor Vehicle

Theft, and Assault in the Second Degree on a Police Officer. The prosecuting attorney was Garth L. Nieschburg (now the Honorable Garth L. Nieschburg, District Judge, Prowers County Courthouse, Lamar, CO 81052 719-336-7424), and the presiding judge was the Honorable Robert Sanderson (retired) (406 Willow Valley, Lamar, CO 81052 719-336-7565). After trial by jury, the defendant was found guilty of only Aggravated Motor Vehicle Theft, and the jury was deadlocked on the other three charges. The defendant was sentenced only to probation.

2. *Larson v. Kim School District R-88*, District Court, Las Animas County, Colorado, case 82 CV 10. I represented the defendant school district in an action for breach of contract filed 1/27/82. During trial to the court, my mid-trial motion to dismiss was granted. Plaintiff's counsel was Sisto Mazza (314 W. Main St., Trinidad, CO 81082 719-846-3334). The presiding judge was the Honorable John E. Anderson (136 Justice Center Road, Canon City, CO 81212 719-269-0113).

3. *Thulemeyer v. Wollert*, 734 P.2d 151 (Colo.App. 1986). I filed in 1978 and successfully represented the plaintiff-appellee in a mineral interest quiet title action in both the trial court (Bent County, Colorado, District Court case 2607) and the court of appeals. Defendants' counsel was Harlan Johnson (deceased). The presiding judge in the trial court was the Honorable Durant D. Davidson (1377 Castle Point Circle, Castle Rock, CO 80104 303-814-8771).

4. *Apple v. Dillon*, District Court, Bent County, Colorado, case 84 CV 1. I successfully represented the defendant in this civil action in which the plaintiff sought money damages for alleged fraud in the sale of an airplane engine and for negligence in its repair. During trial to the court, my mid-trial motion to dismiss was granted. Plaintiff's counsel was Stephan A. Tisdell (303 E. 17<sup>th</sup> Ave. #1100, Denver, CO 80203 303-861-0600). The presiding judge was the Honorable Durant D. Davidson (1377 Castle Point Circle, Castle Rock, CO 80104 303-814-8771).

5. *Campas, et al. v. Gifford, et al.*, District Court, Kiowa County, Colorado, case 82 CV 17. I successfully defended the defendants in a breach of land contract filed 6/30/82 both in the trial court and the court of appeals (See 85CA0591). Trial to the court was conducted November 13 and 14, 1984. Plaintiffs' counsel was T.L. Shinn (deceased). The presiding judge was the Honorable John Statler (deceased).

6. *People v. Briggs*, District Court, Bent County, Colorado, case 80 CR 21. As Deputy District Attorney, I represented the people in this criminal action filed 11/80. After trial by jury held on 2/17/81, the defendant was convicted of Menacing with a Deadly Weapon. However, due to ineffective assistance of defendant's counsel at trial, the people eventually resolved the matter via plea agreement. The defendant's attorney at trial was Elizabeth L. Guyton (currently incapacitated in a nursing home in Rocky Ford, Colorado). His attorney in post-trial proceedings was Randall D. Jorgenson (1660 So. Albion, Suite 918, Denver, CO 80222 303-758-4121). The presiding judge was the Honorable Lewis T. Babcock (Chief District Judge, U.S. District Court, 1929 Stout St., C-246, Denver, CO 303-844-2527).

7. *People v. Adame*, County Court, Bent County, Colorado, case 81 M 8. As a Deputy District Attorney, I successfully prosecuted the defendant who was found guilty after trial by jury on August 10 and 11, 1981, of Assault in the Third Degree. Defendant's

counsel was H. Patrick Furman (Campus Box 404, Boulder, CO 80309 30-492-8126). The presiding judge was the Honorable Thomas F. Marmon (retired).

8. *In Re Marriage of Idler*, District Court, Prowers County, Colorado, case 80 DR 11. I successfully litigated a motion for modification of custody filed 8/6/85 and heard 3/4/86. Respondent's counsel: George McLachlan (3503 1<sup>st</sup> St. So., Lamar, CO 81052 719-3367772); and the Honorable Larry Stutler (800 S. Main/P.O. Box 799, Lamar, CO 81052 719-336-7199). The presiding judge was the Honorable Warren Schmidt (deceased).

9. *In Re Marriage of Bryant*, District Court, Prowers County, Colorado, case 11080. On behalf of the intervening maternal grandparents of the child at issue, I successfully resisted a motion to modify custody filed 11/18/83 and heard 1/23/85. Petitioner's counsel was Maurice Franks (Dublin 3 Ireland). The presiding judge was the Honorable John Statler (deceased).

10. *Flagler Aviation v. Dillon*, District Court, Bent County, Colorado, case 2151. I successfully defended the defendant in an action for negligence filed in approximately 1975. The case was tried to the court without a jury on 10/21/75. Plaintiff's counsel was John M. Yeager (4860 Riverbend Road, Box 1785, Boulder, CO 80308 303-443-7900). The presiding judge was the Honorable Lawrence Thulemeyer (deceased).

19. Legal Activities: describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this litigation, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

19. a. In 1987 I represented the board of directors of a corporation organized to facilitate the sale of Fort Lyon Canal Company water rights. The Fort Lyon Canal Company is the largest mutual irrigation company in Colorado.

b. In 1987 I represented Dorencamp Farms, Inc. (a closely held family corporation) in a lawsuit initiated by a disgruntled family member. I successfully negotiated a settlement of the lawsuit and all other existing issues among the various family members in such a way as to preserve the family farm and mitigate further conflict within this old, established family.

c. Commencing in 1986, in *Melchior, et al. v. King, et al.*, I initiated litigation on behalf of a landlord and his farm-tenant to enjoin the drainage of excess irrigation wastewater across their leasehold. I first successfully negotiated a settlement limiting such drainage to only situations involving acts of God. When the defendants attempted to repudiate the settlement, I successfully defended it the trial court (Bent County, Colorado, District Court case 84 CV 3) (See also 88CA0705 Not selected for official publication, cert denied in 89SC559).

d. In 1987 in *Bender, et al. v. Holbrook Irrigation Co.*, I filed suit on behalf of two farmer-ranchers in Bent County, Colorado, to enjoin the defendant-ditch company from irreparably contaminating Adobe Creek from which my clients irrigated and watered their livestock. The case was transferred to the Water Court for Water Division No. 2. As a result, water quality standards and controls were imposed on the defendant to the benefit of my clients and all appropriators along Horsecreek.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.
  1. **a. My wife and I expect to receive approximately \$119,000 by September 14, 2001, from the sale of real property (irrigated grass pasture) we own in Bent County, Colorado, pursuant to a contract between ourselves and Gary and Reita Fritz of Las Animas, Colorado; and**
  - b. I will be eligible to receive retirement benefits from PERA when I reach retirement age.**
2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.
2. **I know of no potential conflicts of interest. However, in the event of conflict, I would be guided by the Code of Conduct for United States Judges as codified and construed.**
3. Do you have any plans, commitments or agreements to pursue outside, with or without compensation, during your service with the court? If so, explain.
3. **No.**
4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).
4. **Please see my "Financial Disclosure Form for Judicial Nominees" (form AO-10) which is attached.**
5. Please complete the attached financial net worth statement in detail (add schedules as called for).
5. **Please see attached financial worth statement and schedules.**
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
6. **No.**

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
  - a. During the time I was in private practice from May 19, 1975, until July 25, 1988, when I assumed my duties as a state court district judge, on any number of occasions, I served the disadvantaged by representing clients pro bono and by discounting, reducing, or forgiving fees for indigent clients; and
  - b. Since assuming my duties as state court district judge on July 25, 1988, I have served the disadvantaged by serving on the board of directors for Colorado Rural Legal Services, Inc., a non-profit legal services corporation providing legal services to the indigent and disadvantaged and by assisting indigent, pro se, civil litigants to properly and completely present or settle their claims and defenses in cases before me.
2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirement or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?
2. No.
3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).
3. There was an advisory selection committee established by Senators Wayne Allard and Ben Nighthorse Campbell. As required, I submitted the prescribed written application form to the Campbell-Allard Judicial Selection Advisory Committee on March 30, 2001. I was interviewed by the full committee on April 18, 2001. I was then included among those persons whom the committee recommended to Senators Allard and Campbell for further consideration. I was then personally interviewed by Senator Allard on May 4, 2001. I was then included among those persons whom Senators Allard and Campbell recommended to the President for possible nomination. I was then personally interviewed at the White House by the Honorable Alberto R. Gonzales and two members of his staff on May 29, 2001. Judge Gonzales, as Counsel to the President and *ex officio* chair of the President's judicial selection advisory committee, recommended me to the President for nomination.
4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

4. No.

5. Please discuss your views on the following criticism involving “judicial activism.”

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

5. The judiciary stands as our constitutional watchdog and vanguard. However, in preserving and protecting the extant constitution, it is not appropriate to expand its purview to resolve societal exigencies as a matter of expediency. Instead, the rightful role of the judiciary, including and especially the federal judiciary, is sedulously case by case, issue by issue, and litigant by litigant to render reasoned, principled rulings based upon the facts and law unique to each individual case consistent with established principles of *stare decisis* and free from the personal, political, or social agenda of the individual judge or court. Judges, at all levels in both state and federal courts, should be careful to decide the specific issues of the individual case. Although judges should not be ignorant or insensitive to the effects and consequences of their rulings beyond the case then before them, it would be inappropriate to allow those redounds to supplant or become the standards in relationship to which an individual case is decided.

A judiciary that employs individual plaintiffs as the vehicle for the imposition of far-reaching orders affecting broad classes of individuals is a judiciary that has spuriously expanded its intended and rightful constitutional role and illegitimately usurped the role of the legislature. Any such tendency by the judiciary to use individual cases to impose sweeping, affirmative duties on government and society constitutes unwarranted interference with the democratic, legislative process and violates the constitutional principle of separation of powers.

It would indeed be presumptuous of a court to impose itself upon other institutions as an administrator with continuing oversight responsibilities. Instead, the proper role of the court is to determine the issues in the specific case before it and rule accordingly. Implementation of those orders should be entrusted to those with the requisite and relevant education, background, training, and experience within the effected institutions. Enforcement of those orders should be achieved through traditional legal remedies: injunctive relief; mandamus; or contempt.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	151,512	Notes payable to banks—secured	-0-
U.S. Government securities—add schedule	-0-	Notes payable to banks—unsecured	-0-
Listed securities—add schedule	22,854	Notes payable to relatives	-0-
Unlisted securities—add schedule	-0-	Notes payable to others	-0-
Accounts and notes receivable:	-0-	Accounts and bills due	5,000
Due from relatives and friends		Unpaid income tax	-0-
Due from others		Other unpaid tax and interest	-0-
Doubtful		Real estate mortgages payable—add schedule	-0-
Real estate owned—add schedule	150,000	Chattel mortgages and other liens payable	-0-
Real estate mortgages receivable	-0-	Other debts—itemize:	-0-
Autos and other personal property	70,000		
Cash value—life insurance	-0-		
Other assets—itemize:	-0-		
		Total liabilities	5,000
		Net Worth	389,371
Total Assets	394,371	Total liabilities and net worth	394,371
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	-0-	Are any assets pledged? (Add schedule.)	No
On leases or contracts	-0-	Are you defendant in any suits or legal actions?	No
Legal Claims	-0-	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	-0-		
Other special debts	-0-		



SCHEDULES  
TO  
FINANCIAL STATEMENT  
NET WORTH

Schedule of Listed Securities:

1. John Hancock Funds, Regional Bank B; 51 shares; fair market value \$2,288
2. Hartford Cap Appreciation CL A; IRA; 372 shares; fair market value \$10,565;
3. Van Kampen Focus Portfolio Unit 255; 467 shares; fair market value \$4,964;
4. Van Kampen Focus Portfolio Unit 272; 420 shares; fair market value \$4,237;
5. Europa Cruises; 1000 shares; fair market value \$800.

Schedule of Real Estate Owned:

1. Single family residence in Las Animas, Colorado 81054; fair market value \$150,000; and

FINANCIAL DISCLOSURE REPORT FOR NOMINEES		Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App., §§101-111)
1. Person Reporting (Last name, first, middle initial) <b>Blackburn, Robert E.</b>	2. Court or Organization <b>U.S. District Court - Colorado</b>	3. Date of Report <b>9/10/01</b>
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) <b>U.S. District Judge (Nominee)</b>	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <b>9/10/01</b> Initial Annual Final	6. Reporting Period <b>1/1/2000</b> <b>9/10/01</b>
7. Chambers or Office Address <b>Otero County Courthouse 13 W. 3rd Street La Junta, CO 81050</b>	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

## I. POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. <b>Director (Chairperson)</b>	<b>SB-94 Committee, Sixteenth Judicial District</b>
2. _____	_____
3. _____	_____

## II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1. <b>2000</b>	<b>PERA Retirement Plan with State of Colorado, no control</b>
2. <b>2001</b>	<b>PERA Retirement Plan with State of Colorado, no control</b>
3. _____	_____

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1. <b>2000</b>	<b>Self-employed, Nail Technician</b>	\$ _____
2. <b>2001</b>	<b>Self-employed, Nail Technician</b>	\$ _____
3. <b>2000</b>	<b>Blackburn Angus, Black Angus Cattle Ranch</b>	\$ <b>58,103</b>
4. <b>2001</b>	<b>Blackburn Angus, Black Angus Cattle Ranch</b>	\$ <b>195,645</b>
5. _____	_____	_____

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Robert E. Blackburn	9/10/01

**REIMBURSEMENTS** - transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

SOURCE	DESCRIPTION
<input type="checkbox"/> NONE (No such reportable reimbursements.)	
	Exempt

**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)

SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/> NONE (No such reportable gifts.)		
	Exempt	\$
1		\$
2		\$
3		\$
4		\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)

CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/> NONE (No reportable liabilities.)		
1 First National Bank of Las Animas	business loan (credit line)	L
2 Robert and Evelyn Ham	mortgage (business)	K
3		
4		
5		
6		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Robert E. Blackburn	Date of Report 9/10 /01
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I. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

NONE (No reportable income, assets, ...)									
1	First Nat'l Bank Las Animas	B	int.	P3	T				
	Real estate, Bent Co., CO	C	rent	M	Q				
	(1996 \$53,730)								
	John Hancock Funds								
	Regional Bank B	A	div.	J	T				
4	Hartford Cap Appreciation								
	CL A (IRA)	C	div.	J	T				
5	Van Kampen Focus								
	Port Folio Unit 255	A	div.	J	T				
6	Van Kampen Focus								
	Port Folio Unit 257	A	div.			Exempt			
7	Van Kampen Focus								
	Port Folio Unit 269	A	div.			Exempt			
8	Van Kampen Focus								
	Port Folio Unit 272	A	div.	J	T				
9	Cisco Systems, Inc.	A	div.			Exempt			
10	JDS Uniphase Corp.	A	div.			Exempt			
11	J.P. Morgan Chase & Co.								
	PFD	A	div.			Exempt			
12	Nokia Corp.	A	div.			Exempt			
13	Europa Cruises	A	div.	J	T				
14	Aim Blue Chip Fund Class B	A	div.	J	T				
15	Oppenheimer Main. St.								
	Growth & Income Fund B	A	div.	J	T				
16	Alger Fund								
	Balanced Class B	A	div.			Exempt			
17	Alliance Cap Reserve								
	Money Market Fund	A	int.	K	T				

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert E. Blackburn	9/10 /01

**I. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Line	Description	Code	Div.	Exempt	Value	Income	Transactions
18	Van Kampen Focus Portfolio Unit 140	A	div.	Exempt			
19	Van Kampen Focus Unit 136 Pharmaceut. 5	A	div.	Exempt			
20	Van Kampen Focus Unit 136 Telecom. Tr. Ser. 5	A	div.	Exempt			
21	Van Kampen Focus Unit 150 Morgan Stan. H. Tech	A	div.	Exempt			
22	PERA	E	retire. M				
23							
24							
25							
26							
27							
28							
29							
30							
31							
32							
33							
34							
35							

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Robert E. Blackburn	9/10/01

## III. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Robert E. BlackburnDate 9/10/01

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

FILING INSTRUCTIONS	
Submit this report to the Clerk of the United States House of Representatives Committee on Ethics and Oversight 1000 Capitol Building Washington, D.C. 20540	Submit this report to the Clerk of the United States Senate Committee on Ethics and Oversight 1000 Capitol Building Washington, D.C. 20540

Senator CANTWELL. Ms. Jorgenson.

**STATEMENT OF CINDY JORGENSEN, OF ARIZONA, NOMINEE  
TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Judge JORGENSEN. Yes. First of all, I want to thank you so much for the opportunity to be here today.

I have many family members here from various States and I really appreciate their support. First, my husband, Don, and my two children, Tyler, who is 16, and Andrew, who is 13. They are reluctantly dressed in their shirts and ties and they are here today. It is their first visit to Washington, so we are going to spend the next few days touring around.

Also, my parents are here, Richard and Annamaria Kelly, and this is a very special place for them because they met in Washington, D.C. My father is a graduate of Annapolis and my mother worked at the Italian embassy, and they were in those situations when they met here.

I also have numerous cousins. Here, on the far right, my aunt—first, my aunt, Francis Kelly. She is here from New York. Marty Kelly Patel and her husband, Bhogi, they are here from New Jersey. Alice Kelly Enright; she is here from Washington. Jack Kelly is here from Philadelphia. Mary Kelly is here from Connecticut, and then Dr. Steve Kelly is here from New York. So I really appreciate the support of all my family members.

[The biographical information of Judge Jorgenson follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).  
 Cindy Kelly Jorgenson  
 former names used: Cindy Susan Kelly  
                           Cindy Susan Martinez
2. Address: List current place of residence and office address(es).  
 Residence: Tucson, Arizona  
 Office: Division 25  
           Pima County Superior Court  
           110 West Congress  
           Tucson, Arizona 85701
3. Date and place of birth.  
 April 6, 1953  
 Fort Ord, California
4. Marital Status (include maiden name of wife, or husband's name).  
 Married  
 Husband: Donald Bryan Jorgenson  
 List spouse's occupation, employer's name and business address(es).  
 Retired from law enforcement career; professional golfer, part time investigator.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
 Occidental College  
 Los Angeles, California  
 Attended 1971-72  
 University of Arizona  
 Tucson, Arizona  
 Attended 1972-74  
 Degree: B.S. in Business Administration -- May 1974



University of Arizona College of Law  
Tucson, Arizona  
Attended 1974-77  
Degree: Juris Doctor -- May 1977

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Law Clerk: Summer 1976  
Pima County Attorney's Office  
Tucson, Arizona

Deputy County Attorney: 1977 -- 1986  
Pima County Attorney's Office  
Tucson, Arizona

Assistant United States Attorney: 1986 -- 1996  
United States Attorney's Office  
Tucson, Arizona

Superior Court Judge: 1996 -- present  
Pima County Superior Court  
Tucson, Arizona

No service as an officer or director of any non-profit organization.

7. Military Service: Have you had any military service?

No.

If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are

or have been a member and give the titles and dates of any offices which you have held in such groups.

Pima County Bar Association  
 Arizona State Bar Association  
 Arizona Women Lawyer's Association  
 Attorney General's Capital Case Commission  
 Arizona Board of Certified Court Reporters  
 Committee on Superior Court, Arizona Supreme Court  
 Arizona Judges Association  
 Arizona Supreme Court Committee on Jury Reform  
 Morris K. Udall Inn of Court  
 Mentor Program-College of Law, University of Arizona  
 Hearing Committee Member, Disciplinary Commission of the  
 Arizona Supreme Court  
 United States District Court Peer Review Committee  
 New Judge Orientation Committee, Arizona Supreme Court

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

Arizona Judges Association

Please list all other organizations to which you belong.

Quail Valley Tennis Club  
 Metro Fitness Club  
 Shadow Hills Homeowners Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Arizona state courts:	1977 -- present
United States District Court, District of Arizona:	1979 -- present
United States Court of Appeals, Ninth Circuit:	1986 -- present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Capital Case Commission Interim Report                      July 30, 2001  
Published by Janet Napolitano, Arizona Attorney General

Jurors: The Power of 12    September 1994  
Published by the Arizona Supreme Court

Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

No written materials related to any speeches given.

13. Health: What is the present state of your health?

Excellent.

List the date of your last physical examination.

July 24, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Pima County Superior Court: 1996 -- present  
Appointed by the governor  
Retained by general election in 1998.  
General jurisdiction court including felony, civil, juvenile and family law cases.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written

(a) State of Arizona v. Kenneth Roy Rineer  
CR-56179  
July 29, 1997 -- Appeal from Tucson City Court  
Affirmed: City of Tucson v. Rineer, 193 Ariz. 160,  
971 P.2d 207 (App. 1998).

(b) State of Arizona v. Quinn Wilson  
CR-55069  
January 29, 1999 -- Sentencing

Affirmed in Part; Vacated in Part: 2 CA-CR 99-0079  
(2000)

- (c) State of Arizona v. Billy Don Smith  
CR-43338  
December 10, 1999 -- Petition for Post-Conviction  
Relief  
2 CA-CR 00-0037 PR (2000)
  - (d) State of Arizona v. Alex Vidal Hughes  
CR-35338; CR-35836  
February 4, 2000 -- Motion to Dismiss  
Approved: *State v. Jorgenson*, 198 Ariz. 390, 10  
P.3d 1177 (2000).
  - (e) State of Arizona v. Harry Lester Gerow  
CR-48292  
May 26, 2000 -- Petition for Post-Conviction Relief  
2 CA-CR 00-0462-PR (2001)
  - (f) Rae Casteel Holland and Bradley Ray Holland  
D-126183; J-15207000  
November 9, 2000 -- Dissolution of Marriage
  - (g) State of Arizona v. Edwin Anthony Pellecier  
CR-60649  
December 5, 2000 -- Petition for Post-Conviction Relief
  - (h) Richard C. Middleton and Rosemary Middleton  
D-123466  
March 6, 2001 -- Dissolution of Marriage
  - (i) State of Arizona v. Eduardo McClees  
CR-58693  
March 26, 2001 -- Petition for Post-Conviction Relief  
June 13, 2001 -- Post-Conviction Evidentiary Hearing
  - (j) Judith M. Treistman and Lisa K. Harris  
D-102017  
September 8, 2000 -- Motion to Dismiss  
June 15, 2001 -- Motion to Dismiss
- (2) a short summary of and citations for all appellate  
opinions where your decisions were reversed or where your  
judgment was affirmed with significant criticism of your  
substantive or procedural rulings

- (a) Ambrosio Moreno v. Antonio L. Soto, Jr.  
C-307495  
2 CA-CV 97-0060 (1997)

The Court of Appeals of Arizona found that stronger evidence of adverse possession was needed where the claim is between family members and ruled that adverse possession had not been established. The trial court decision was reversed.

- (b) State of Arizona v. Marvin Darneal Johnson  
CR-27930  
Vacated: *State v. Johnson*, 195 Ariz. 553, 991 P.2d 256 (App. 1999).

In a post-conviction relief proceeding, it was ordered that Defendant be required to serve two-thirds of his sentence pursuant to the Arizona statutory scheme.

The Court of Appeals of Arizona reversed, finding that the Arizona statutes required Defendant serve his entire sentence.

- (c) State of Arizona v. Bryan Lamar Booker  
CR-57208  
2 CA-CR 98-0151 (1999)

Defendant was found guilty of first degree murder and drive-by shooting by a jury.

The written jury instruction regarding accomplice liability failed to state the required mental state (intent) for accomplice liability. The Court of Appeals of Arizona found that the correct oral jury instruction by the trial court did not remedy the erroneous written instruction.

The Court of Appeals of Arizona found that a jury instruction regarding the flight of the defendant from the scene of the crime, combined with a concealment of evidence instruction, should not have been given where the evidence did not support an inference that defendant ran away or attempted to hide himself.

The Court of Appeals of Arizona found that prior consistent statements that were not made before a motive to fabricate arose should not have been admitted into evidence at trial.

The conviction was vacated and the case remanded to the trial court for a new trial. The defendant was convicted at the retrial.

- (d) State of Arizona v. Quinn Wilson  
CR-55069  
2 CA-CR 99-0079 (2000)

Defendant was found guilty of first degree felony murder and second degree murder involving two victims.

The Court of Appeals of Arizona found that the evidence did not establish that Defendant's use of force coexisted with his intent to rob the victim. The felony murder conviction, therefore, was vacated.

- (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions

- (a) Judith M. Treistman and Lisa K. Harris  
D-102017  
September 8, 2000 -- Motion to Dismiss  
June 15, 2001 -- Motion to Dismiss
- (b) State of Arizona v. Alex Vidal Hughes  
CR-35338; CR-35836  
February 4, 2000 -- Motion to Dismiss  
Approved: State v. Jorgenson, 198 Ariz. 390, 10 P.3d 1177 (2000).
- (c) State of Arizona v. Kenneth Roy Rineer  
CR-56179  
July 29, 1997 -- Appeal from Tucson City Court  
Affirmed: City of Tucson v. Rineer, 193 Ariz. 160, 971 P.2d 207 (App. 1998).

If any of the opinions listed were not officially reported, please provide copies of the opinions.

- 16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No service in this capacity.

2. whether you practiced alone, and if so, the addresses and dates;

No service in this capacity.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1977 -- 1986  
Office of the Pima County Attorney  
32 North Stone Avenue  
Tucson, Arizona 85701  
Deputy County Attorney  
-- criminal division

1986 -- 1996  
United States Attorney's Office  
405 West Congress, Suite 4800  
Tucson, Arizona 85701  
Assistant United States Attorney  
-- civil and criminal divisions

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1977 -- 1986  
State prosecutor

1986 -- 1988  
Federal prosecutor

1988 -- 1996  
Civil lawyer for United States Attorney's  
Office

1996 -- present  
Pima County Superior Court Judge: criminal  
and family law cases

2. Describe your typical former clients, and  
mention the areas, if any, in which you have  
specialized.

Former clients: The state and federal governments. I  
specialized in criminal prosecution, in federal civil  
litigation defending the United States of America and  
its agencies, and as a judge in criminal and family law  
matters.

- c. 1. Did you appear in court frequently,  
occasionally, or not at all?

Frequently.

If the frequency of your appearances in court  
varied, describe each such variance, giving  
dates.

2. What percentage of these appearances was in:  
(a) federal courts

50% as a practicing attorney

- (b) state courts of record

50% as a practicing attorney

- (c) other courts

3. What percentage of your litigation was:

- (a) civil

20%

- (b) criminal

80%



4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

100 to 125- sole counsel-95% of all cases.

5. What percentage of these trials was:

(a) jury

90%

(b) non-jury

10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *State of Arizona v. Michael Estacio Ferreira*, 128 Ariz. 530, 627 P.2d 681 (1981).

Trial court: Honorable Thomas Meehan; Pima County Superior Court

Represented: State of Arizona; 1980 -- 1981

Co-Counsel: Elizabeth Peasley-Fimbres  
Judge *Pro Tempore*  
Pima County Superior Court -- Juvenile  
2225 E. Ajo Way  
Tucson, Arizona 85713-6295  
(520) 740-2052

Opposing Counsel: Charles J. Babbitt  
 Maricopa Legal Defender's Office  
 222 N. Central, Suite 910  
 Phoenix, Arizona 85004-2237  
 (602) 506-8800

Michael J. Bloom  
 100 N. Stone, Suite 701  
 Tucson, Arizona 85701-1516  
 (520) 882-9904

The defendant was charged with several counts of armed rape, armed burglary, attempted armed rape and attempted armed burglary. The defendant broke into residences of nine women in 1978 and was known as the "apologetic rapist." He was found guilty by a jury and received eleven concurrent sentences of thirty years to life.

The state called approximately fifty witnesses during the three week trial. Expert testimony about fingerprint identification was presented in great detail by both the defense and the state. Scientific experts also testified as to serology linking the defendant to the crime. The legality of the arrest of the defendant and the subsequent search of his car were also litigated.

2. *State v. George Hauss*, 142 Ariz. 159, 688 P.2d 1051 (1984).

Trial court: Honorable Richard Hannah, Pima County Superior Court

Represented: State of Arizona; 1983 -- 1984

Co-counsel: Richard Nichols  
 Judge -- Division 14  
 Pima County Superior Court  
 110 W. Congress Street  
 Tucson, Arizona 85701  
 (520) 740-3567

Opposing Counsel: Barry J. Baker Sipe  
 Pima County Legal Defender's Office  
 32 N. Stone Avenue, Suite 700  
 Tucson, Arizona 85701-1406  
 (520) 740-5775

The defendant broke into the homes of ten different female victims between December, 1980, and September, 1981. He was known as the "foot-fetish" rapist because in almost every case the defendant would fondle the victims' feet before raping them at knife-point.

The challenges at trial included presenting a large number of witnesses including victims who had been severely traumatized by the defendant and the fact that only one victim had picked the defendant out of a lineup and was able to identify him at trial. Identification of the defendant as the perpetrator was made through fingerprint analysis, serology comparisons and victims' property found at the defendant's residence.

Prior to trial, the State successfully litigated the admissibility of a conversation between the defendant and his girlfriend in a police station interview room which was recorded without the defendant's consent.

A jury convicted the defendant of twenty-eight felony counts and he received a seventy year prison sentence.

3. *State v. Gentry G. Neal*, 143 Ariz. 93, 692 P.2d 272 (1984).

Trial court: Honorable Philip J. Fahringer, Pima County Superior Court

Represented: State of Arizona; 1983 -- 1984

Opposing Counsel: Dan Grills  
Pima County Public Defender's Office  
32 North Stone Avenue, Suite 400  
Tucson, Arizona 85701  
(520) 740-5300

Defendant was convicted of first degree murder. At trial, the defendant did not dispute killing the victim, but asserted that he was temporarily insane and was not responsible for his actions.

Conflicting expert psychiatric testimony was presented at trial. The State established that defendant had acted knowingly and could distinguish right from wrong.

4. *Bernie Rickman v. United States of America and Evergreen Air Center, Inc.*, CIV 87-693 TUC WDB

Trial court: Honorable William D. Browning, United States District Court for the District of Arizona

Represented: United States of America; 1986 -- 1988

Opposing Counsel: Michael Bloom  
100 N. Stone, Suite 701  
Tucson, Arizona 85701-1516  
(520) 882-9904

Rickman sued the United States for damages under the Federal Tort Claims Act alleging that he was assaulted at the Federal Law Enforcement Training Center near Marana, Arizona. He claimed that the United States negligently failed to supervise a student who attacked him at the facility and that a federal official made derogatory comments about him, causing him emotional distress. The United States prevailed in this case after filing two motions for summary judgment.

Extensive pleadings were filed relating to Arizona negligence law including the foreseeability of the assault and the tort of negligent infliction of emotional distress. The case was of legal significance because it required the parties and the federal court to conduct a detailed analysis of Arizona negligence law as applied to cases arising under the Federal Tort Claims Act.

5. *United States v. Lawrence Lewis, Jr.*, 837 F.2d 415 (9th Cir. 1988).

Trial court: Honorable William D. Browning, United States District Court for the District of Arizona

Represented: United States of America; 1987 -- 1988

Opposing Counsel: Frederic F. Kay  
Chief Federal Public Defender  
97 E. Congress Street, Suite 130  
Tucson, Arizona 85701-1716  
(520) 879-7500

The defendant was convicted by a jury of second degree murder for killing his two year old stepson on the Ft. Huachuca military base. One issue at trial was the defendant's state of mind when he struck the victim. After extensive argument the trial court allowed the jury to hear evidence that the defendant beat the child six weeks prior

to his death. The Court of Appeals for the Ninth Circuit upheld the trial court's decision. This case is now precedent in federal court regarding the admissibility of prior bad acts of a defendant at trial.

A second significant issue in this case dealt with jury selection. The defendant, an African-American, argued that one of two African-American prospective jurors should not have been struck from the jury panel. The United States Supreme Court has ruled in *Batson v. Kentucky*, 476 U.S. 79 (1986) that exclusion of a juror for reasons based solely on race was reversible error. The Court of Appeals for the Ninth Circuit ruled that jury selection was properly conducted. This case was one of the first from the Court of Appeals for the Ninth Circuit to define the parameters of the *Batson* case.

6. *United States v. Bella Vishnevetsky*, CA No. 88-1079.  
(Memorandum decision filed by the court.)

Trial court: Honorable Robert C. Belloni, United States District Court for the District of Arizona

Represented: United States of America; 1987 -- 1988

Opposing Counsel: Jim Himellic -- deceased

The defendant was convicted by a jury of three counts of mail fraud. The fraud involved the defendant's attempt to collect on a life insurance policy issued for a non-existent twin sister who supposedly died in Russia.

The defense called several witnesses from Russia to testify about the existence of the twin sister. The government called as an expert witness a Russian language professor from the University of Arizona who testified that the Russian birth and death certificates produced by the defendant were phony documents.

Despite a jury verdict of guilty, the trial court judge overturned the verdict and ordered a judgment of acquittal, on the grounds that there was insufficient evidence to support a conviction.

The government successfully appealed this decision to the Court of Appeals for the Ninth Circuit, which reversed the trial court and reinstated the guilty verdict, emphasizing the importance of preserving the province of the jury.

7. *United States of America v. John and Judy Bibb*  
United States Court of Appeals for the Ninth Circuit: C.A.  
87-1325 and C.A. 87-1326 (1988).

Trial court: Honorable Alfredo Marquez, United States  
District Court for the District of Arizona

Represented: United States of America; 1987 -- 1988

Defendants represented themselves in this matter.

Last known address: P.O. Box 215  
Safford, Arizona 85546

This case involved the prosecution of two very active tax  
protestors in Arizona. The case was significant because of  
the multitude of pleadings filed by the defendants and the  
difficulty in case management for the government and the  
trial judge.

8. *Federico Estrada-Escalante v. United States of America*,  
No. 91-15521, June 30, 1992.

Trial court: Honorable Richard M. Bilby, United States  
District Court for the District of Arizona

Represented: United States of America; 1991 -- 1992

Opposing Counsel: Amy Langerman  
Langerman Law Offices  
350 East Virginia, Suite 100  
Phoenix, Arizona 85004  
(602) 240-5525

Jerry Myers  
432 East Speedway  
Tucson, Arizona 85705  
(520) 624-8512

This case involved the issue of the application of the  
federal service of process rules when the United States is a  
party. Even though the United States had notice of the  
action and was actively defending the case, because the  
Attorney General was never served, the case was dismissed by  
the trial court and affirmed on appeal.

9. *Valencia v. United States of America*, 819 F.Supp. 1446  
(1993).

Trial court: Honorable Nancy Fiora, magistrate judge,  
United States District Court for the District  
of Arizona

Represented: United States of America; 1992 -- 1993

Opposing Counsel: Alexander Sierra  
Raven and Averkamp PC  
One South Church Avenue, Suite 1600  
Tucson, Arizona 85701  
(520) 628-8700

This case was a wrongful death action filed under the Federal Tort Claims Act against the United States. The main issues were the proximate cause of death of the decedent and whether the treating physician's treatment fell below the standard of care. The court issued a defense verdict in favor of the United States.

10. *United States of America v. \$814,254.76 in U.S. Currency*, 51 F.3d 207 (1995)

Trial court: Honorable Alfredo Marquez, United States  
District Court for the District of Arizona

Represented: United States of America; 1994 -- 1995

Opposing Counsel: Sean Bruner  
124 West University Boulevard  
P.O. Box 591  
Tucson, Arizona 85702  
(520) 624-8000

This case was a civil forfeiture case involving the seizure of money from a bank account that was not directly traceable to laundered funds. Millions of dollars were laundered from Mexico into a bank account in the United States through the same account prior to the seizure. The legal issue was the retroactivity of a federal civil forfeiture statute allowing the forfeiture of such funds.

Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As a member of the Arizona Supreme Court Committee on More Effective Use of Juries in 1994, I was involved in drafting and recommending the adoption of several jury reforms for Arizona juries. These included allowing jurors to take notes and ask questions during the trial, creating a juror "Bill of Rights", encouraging lawyers to make brief opening statements to the jury panel during voir dire to better educate the jury panelists about the case before they are questioned by the judge, use of preliminary written jury instructions at the start of the trial, and amending the criminal rules to allow the judge and counsel to respond more effectively to juror's questions during deliberations. Many of the reforms recommended by the committee were adopted in Arizona and have enhanced the administration of justice at the courts.

I have been a member of the Arizona Attorney General's Capital Case Commission since September of 2000. The Commission has made several recommendations in order to ensure that the death penalty process is fair to both defendants and victims. The Commission is comprised of prosecutors, defense attorneys, legislators, trial and appellate judges, victim's rights advocates and citizens. The Commission's recommendations include the creation of a statewide capital case defense office, giving the trial judge authority to appoint a mitigation specialist early in the case, no executions of mentally retarded defendants or defendants under the age of eighteen, ensuring the competence of defense counsel in capital cases, improving the sentencing process to enhance the right of families of victims to be heard and methods for limiting the delay between conviction and appeal.

As a state prosecutor, I assisted in drafting and presenting to the Arizona legislature the first felony child abuse statutes enacted in Arizona.

While working as an Assistant United States Attorney, I managed the Asset Forfeiture Unit for the Tucson office. This involved setting policy for asset forfeiture cases, conducting training for attorneys and law enforcement agents, and working with local and federal law enforcement agencies to coordinate forfeiture investigations.



As presiding judge of the family law bench, I formed a committee which I chaired to amend our local rules. I also implemented a counseling program for parents and their children through the Conciliation Court for high conflict parents involved in excessive litigation. I am currently involved in creating a web page for family law cases with information and forms for litigants and modifying the assignment of paternity cases so that these cases will be permanently assigned to a single judge. I am also working with the Pima County Attorney's Office and social service agencies to develop a referral system for unemployed or under-employed parents who are failing to meet their child support obligations.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have funds in the Arizona state deferred compensation plan from my current employment. I have no present intentions of withdrawing these funds. I have also invested in the federal government Thrift Savings Plan while employed at the United States Attorney's Office. I have no present plans to withdraw these funds.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the guidelines outlined in the Code of Judicial Conduct in determining whether a conflict of interest exists. Because I have been a judge for five years and, therefore, not had clients or participated in litigation as an attorney, I do not anticipate many conflicts of interest. If an attorney appearing before me is a personal friend, I would give opposing counsel proper notice and would recuse myself from the case if I felt it was appropriate or if requested to do so. My previous employment at the United States Attorney's Office was five years ago and should not create any conflict issues. If there are still active cases that I have in any way worked on for that office, I would recuse myself from hearing those cases. To my knowledge, I have no financial arrangements which would pose a potential conflict of interest. There are no categories of litigation that create potential conflicts of interest to my knowledge.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

09/24/2001 14:15 7403140	HON CINDY JORGENSEN	PAGE 02/07
AO-10 (w) Rev. 1/2000	<b>FINANCIAL DISCLOSURE REPORT</b>	Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)
<b>Initial Report</b>		

1. Person Reporting (Last name, first, middle initial) Jorgenson, Cindy K.	2. Court or Organization U. S. District Court of Arizona	3. Date of Report 09/13/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. Dist. Crt Judge (Nominee)	5. Report Type (check type) Nomination, Date 09/10/2001 X Initial Annual Final	6. Reporting Period 01/01/2000 to 08/31/2001
7. Chambers or Office Address 110 West Congress Tucson, Arizona 85701	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	
2	
3	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000	Nationwide Retirement Solutions -- former state employment -- no control
2	
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Arizona Public Safety Retirement System -- Retired	
2 2000	Arizona Public Safety Retirement System -- Retired	
3 2001	Arizona Public Safety Retirement System -- Retired	
4 1999	Pima County/State of Arizona -- compensation for judicial officer employment	\$133,000

09/24/2001 14:15 7403140	SECTION VI, PART I RESPONDING	HON CINDY JORGENSEN	PAGE 03/07
Jorgenson, Cindy K.		DATE OF REPORT	09/13/2001

**FINANCIAL DISCLOSURE REPORT**

**SECTION HEADING.** (Indicate part of report.)  
Information continued from Parts I through VI, inclusive.

**PART 3. NON-INVESTMENT INCOME (cont'd.)**

Line	Date	Source and Type	Gross Income
5	2000	Pima County/State of Arizona -- compensation for judicial officer employment	\$115,500
6	2001	Pima County/State of Arizona -- compensation for judicial officer employment	\$80,500

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**FINANCIAL DISCLOSURE REPORT** Jorgenson, Cindy K. PAGE 04/07  
 DATE of Report 09/13/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

<input type="checkbox"/> NONE	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input type="checkbox"/> NONE	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> NONE	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	MBNA America	Credit Card	J
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

09/24/2001 14:15 7483140		NAME OF PERSON REPORTING Jorgenson, Cindy K.		HON CINDY JORGENSON		PAGE 05/07 Date of Report 09/13/2001			
<b>FINANCIAL DISCLOSURE REPORT</b>									
<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Fidelity Contrafund	A	Dividend	X	T	Exempt				
2 Fidelity Equity Income	A	Dividend	J	T	Exempt				
3 Janus Twenty Fund	A	Dividend	J	T	Exempt				
4 American Century Ultra Fund	A	Dividend	X	T	Exempt				
5 Vanguard Institutional Index Fund	A	Dividend	J	T	Exempt				
6 Vanguard Growth and Income Fund	A	Dividend	J	T	Exempt				
7 American Century Select Fund	A	Dividend	X	T	Exempt				
8 Nationwide Retirement Solutions	A	Dividend	L	T	Exempt				
9									
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

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### III. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

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### IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 4, Section 501 et. seq., 5 U.S.C. 7253, and Judicial Conference regulations.

Signature

*Cindy K. Jorgenson*

Date

9-13-01

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 504)

#### FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$3,000	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule		Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:	0	Accounts and bills due	
		Tucson Old Pueblo Credit Union	\$2,200
		Pima Federal Credit Union	\$2,000
		Capital One Visa	\$3,900
		Capital One MasterCard	\$4,100
		Providian Visa	\$3,800
		Platinum Miles Plus Visa	\$8,085
		Bank of America Visa	\$2,500
		Fleet Mastercard	\$500
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	
Doubtful	0	Real estate mortgages payable-add schedule	\$225,000
Real estate owned-add schedule	\$350,000	Chattel mortgages and other liens payable	
Tucson, AZ		Other debts-itemize:	
Real estate mortgages receivable			
Autos and other personal property			
1990 Mercedes	\$14,000		
1994 Suburban	\$13,000		
Cash value-life insurance			
Other assets itemize:			
Federal Thrift Savings Plan	\$280,000		
American Century Domestic fund	\$28,000		
Vanguard Growth and Income fund	\$6,000	Total liabilities	\$252,085
Arizona Deferred Compensation fund	\$49,000	Net Worth	\$487,915
Total Assets	\$740,000	Total liabilities and net worth	\$740,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged? (Add schedule)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

## ADDENDUM TO FINANCIAL STATEMENT

ASSETS

Cash on hand and in banks	\$3,000.00
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Securities

Federal Thrift Savings Plan	\$280,000.00
American Century Domestic Equity fund	\$28,000.00
Vanguard Growth and Income Fund	\$6,000.00
State of Arizona Deferred Compensation fund	\$49,000.00

These values fluctuate and are approximate.

Real Estate

Family residence	\$350,000.00
Tucson, Arizona	

Vehicles

1990 Mercedes	\$14,000.00
1994 Suburban	\$13,000.00

<u>TOTAL ASSETS</u>	\$740,000.00
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LIABILITIES

Mortgage -- Homestead Lending, Inc.	\$225,000.00
Tucson, Arizona	
Tucson Old Pueblo Credit Union	\$2,200.00
Pima Federal Credit Union	\$2,000.00
Capital One Visa	\$3,900.00
Capital One Mastercard	\$4,100.00
Providian Visa	\$3,800.00
Platinum Miles Plus Visa	\$8,085.00
Bank of America Visa	\$2,500.00
Fleet Mastercard	\$500.00

<u>TOTAL LIABILITIES</u>	\$252,085.00
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<u>NET WORTH</u>	\$487,915.00
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III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have worked consistently through the court system with disadvantaged pro se litigants in family law matters to ensure they have equal access to justice. I have been doing this since I have been on the family law bench for the past three years. Presently, I am working with others in the court system and social service community to create a program to provide unemployed fathers with employment so that they can meet their child support obligations.

I have served at the law school as a moot court judge and evaluator for law students in trial skills classes two or three times per year for the past several years.

I have mentored law students by having them spend a semester with me at the courthouse. I have done this every semester for the past three years.

I have given talks to school children from Tucson schools about the courts. Many of these children come from disadvantaged backgrounds.

I have participated through my church annually to help provide food and clothing to the needy during the holiday season.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in Arizona. I was contacted by a staff member from Senator Kyl's office and asked if I was interested in the position. Senator Kyl then interviewed me in Tucson. I then received a phone call from a member of the White House Counsel's staff and was invited to the White House for an interview. I was interviewed at the White House by White House Counsel, Mr. Gonzales, one of his assistants and an attorney from the Department of Justice. I then received a phone call from an attorney from the White House Counsel's Office stating that once I successfully completed the background check, the Department of Justice would recommend me to the President for nomination to the federal judiciary in Tucson, Arizona.

Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the

imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal district courts are courts of limited jurisdiction, handling primarily cases involving federal laws, the Constitution, and cases in which the United States is a party. A case or controversy as defined in federal law must exist for the court to have jurisdiction to hear the matter. The plaintiff must have standing to assert the claims being raised in the lawsuit. A controversy must be ripe or justiciable before it should be considered by the court. The doctrine of stare decisis or precedent requires the trial court to follow other written decisions on the same issues. The judge should rule on the case before her based on the relevant facts presented by the parties and the applicable law.

Senator CANTWELL. Thank you for those introductions. Mr. Leon.

**STATEMENT OF RICHARD LEON, OF MARYLAND, NOMINEE TO  
BE DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Mr. LEON. Thank you very much, Madam Chairwoman. I appreciate——

Senator CANTWELL. I hope you are not going to be outdone because you are here in the District of Columbia. [Laughter.]

Mr. LEON. No, I can't even approach Judge Jorgenson in that regard, but I certainly want to join with her in thanking you for agreeing to chair this hearing today, and thank Senator Leahy and Ranking Member Hatch and the other Senators who have come out today to make it possible for us to have this hearing. Certainly, I think it is fair to say that the process we go through is an arduous one, and it is a relief to get to this point and we are very grateful to be here.

I am pleased to have with me here today my wife of 28 years, Christine Leon, and my son, who is 10 and about to become 11, Nicholas Leon, seated here. He is getting a firsthand lesson in the civics process, so I think that was enough of a justification for his fifth grade teacher to let him go early today.

I also have some of my former partners here, Fred Graefe and Dick Hauser, and a number of other friends who have been nice enough to come out today to join with me here today.

So, again, thank you all very much and I appreciate the opportunity to be heard.

[The biographical information of Mr. Leon follows:]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Richard John Leon  
 Nickname: ("Dick" Leon)

2. **Address: List current place of residence and office address(es).**

Residence since 1990: Chevy Chase, MD  
 Office address since 1999: Vorys, Sater, Seymour, and Pease LLP  
 1828 L Street, N.W.  
 Suite 1111  
 Washington, DC 20036

3. **Date and place of birth.**

December 3, 1949  
 Natick, Massachusetts

4. **Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Marie-Christine Costa Leon (since 1973)  
 Maiden Name: Marie-Christine Genievive Costa

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

College of the Holy Cross A.B., 1971  
 Worcester, Massachusetts  
 (9/67 - 6/71)

Suffolk University Law School J.D., cum laude, 1974  
 Boston, Massachusetts  
 (9/71 - 6/74)

Harvard University Law School LL.M., 1981  
 (9/78 - 6/79)

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,**

**nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

WASHINGTON PARTNER, Vorys, Sater, Seymour and Pease LLP, 1828 L Street, N.W., Washington, D.C. 20036, March 1999 to present.

COMMISSIONER, The Judicial Review Commission on Foreign Asset Control, March 2000 to January 2001.

ADJUNCT PROFESSOR OF LAW, Georgetown University Law Center, Washington, D.C., May 1997 to present. Co-teach "Congressional Investigations" with John D. Podesta.

PARTNER, Baker & Hostetler LLP, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036, April 1989 to March 1999.

SPECIAL COUNSEL, United States House Ethics Reform Task Force, February 1997 to September 1997.

SPECIAL COUNSEL ("WHITEWATER INVESTIGATION"), United States House Banking, Finance & Urban Affairs Committee, July 1994 to August 1994.

CHIEF MINORITY COUNSEL, United States House Foreign Affairs Committee "October Surprise" Task Force, February 1992 to January 1993.

COMMISSIONER, The President's Commission on White House Fellowships, December 1990 to January 1993. Appointed by President George Bush.

DEPUTY ASSISTANT ATTORNEY GENERAL, Environmental & Natural Resources Division, United States Department of Justice, March 1988 to January 1989.

DEPUTY CHIEF MINORITY COUNSEL, United States House Select "Iran-Contra" Committee, March 1987 to March 1988.

SENIOR TRIAL ATTORNEY, United States Department of Justice, Tax Division, Criminal Section, October 1983 to March 1987.

ASSISTANT PROFESSOR OF LAW, St. John's University School of Law, New York. September 1979 to August 1983. Courses taught: Criminal Law, Property, Negotiations, and Legal Research and Writing.

SPECIAL ASSISTANT UNITED STATES ATTORNEY, Southern District of New York (Civil Division), January 1977 to August 1978. Appointed by Robert B. Fiske, Jr.



UNITED STATES DEPARTMENT OF JUSTICE (HONORS PROGRAM), General Attorney, Immigration & Naturalization Service, September 1976 to January 1977.

LAW CLERK to Honorable Thomas F. Kelleher, Associate Justice of the Supreme Court of Rhode Island, September 1975 to August 1976.

LAW CLERK to Chief Justice McLaughlin and the Associate Justices of the Superior Court of Massachusetts, September 1974 to August 1975.

CLERK (part-time), Federal Reserve Bank, Boston, Massachusetts, June 1973 to August 1973.

POLICE OFFICER, Barstable Police Department, Hyannis, Massachusetts. , June 1972 to August 1972.

CHIEF COUNSELOR, Hyannisport Country Club Caddie Camp, Hyannisport, Massachusetts, June 1971 to August 1971.

#### ACADEMIC BOARDS

MEMBER, Board of Trustees, Suffolk University, Boston, Massachusetts, (1989-1998).

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

College of The Holy Cross: 1971 Distinguished Service Award of The President of the College; Purple Key Society, Executive Board Officer; Varsity Lacrosse Team, Tri-Captain.

Suffolk University Law School: Graduated cum laude; Order of Barristers; Moot Court Board, Executive Officer, Chairman of The Tom C. Clark Moot Court Competition; Suffolk University Law Review, Staff Writer, Annual Survey of Rhode Island Law and Contributor to Vol. VIII; Outstanding Regional Student Award.

United States Department of Justice: Outstanding Attorney Award, United States Department of Justice, Tax Division; Letters of Commendation, Director of the Federal Bureau of Investigation and Commissioner of the IRS; Letters of Commendation and Certificate of Appreciation, Director of the Secret Service; Commendation, IRS Criminal Investigation Division; Trial Advocacy Instructor and Lecturer, The Attorney General's Advocacy Institute.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Member: (1974-1999), Tax, Criminal Law and Environmental Sections

Rhode Island Bar Association

Member: (1975-present)

District of Columbia Bar Association

Member: (1990-present)

The Federalist Society

Member: (1987-present)

Member: National Practitioners' Advisory Council, (1996-present)

Washington Legal Foundation

Member: Legal Advisory Board, (2000-present)

Committee on Admissions and Grievances, U.S. Court of Appeals, D.C. Circuit

Member: (1994-2000)

Edward Bennett Williams Inn of Court (Washington, DC)

Member: (1989-present)

Board of Trustees, Suffolk University, Boston, Massachusetts

Member: (1989-1998)

Judicial Conference for the District of Columbia Circuit

Member: (1991-present)

Judicial Conference of the Fourth Circuit

Member: (1997 and 2001)

Practitioners' Advisory Group, U.S. Sentencing Commission

Member: (March 2000-present)

Suffolk University Law School Alumni Association, Director and Past President, Boston, Massachusetts, 1985 to 1990.

Suffolk Law School Association of Metropolitan Washington, Inc., Founder, Director and Past President, 1983 to 1988.

Suffolk Law School Association of Metropolitan New York, Inc., Founder and Past President, 1981 to 1984.

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

(a) Other than my law firm, I am not a member of any organization that lobbies congress.

(b) Other organizations: The John Carroll Society (since 1990).

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Rhode Island (since 1975) (Inactive status since 1999)

D.C. Court of Appeals (since 1991)

U.S. Court of Appeals for the Second Circuit (since 1977)

U.S. Court of Appeals for the D.C. Circuit (since 1992)

U.S. Court of Appeals for the Fourth Circuit (since 1990)

U.S. District Court of Rhode Island (since 1976)

U.S. District Court for the District of Columbia (since 1991)

U.S. Supreme Court (since 1984)

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

(A) Publications

**Article:** Congressional Investigations: Are Partisan Politics Undermining Our Vital Institutions?, 31 Suffolk U. Law Rev. 825 (1998).

**Symposium:** The Independent Counsel Process: Is It Broken And How Should It Be Fixed? (contributing participant), 54 Wash. & Lee Law Rev. 1515 (1997).

**Chapter:** "Environmental Crime", Lawyers' Desk Book On White-Collar Crime, published December 1991.

**Article:** Clarence Thomas: Another Potter Stewart? USA Today, September 16, 1991, opp. editorial page.

**Article:** Environmental Criminal Enforcement: A Mushrooming Cloud, 63 St. John's Law Rev. 679 (1989).

**Article:** Art of Inquiry Rehashing (with U.S. Representative Henry Hyde) Washington Times, June 19, 1989, opp. editorial page.

**Article:** Justice Kelleher: A Public Servant's Perspective, 22 Suffolk U. Law Rev. 267 (1988).

**Comment:** Informed Consent to Medical Treatment, Avoiding the "Community of Silence," 8 Suffolk U. Law Rev. 904 (1974).

**Comment:** Torts-Recovery for Negligently Inflicted Loss of Consortium Recognized for Both Spouses, 8 Suffolk U. Law Rev. 1334 (1974).

(B) Speeches:

Speeches 2001

- 4/18/01 Guest Lecture on "Congressional Investigations"  
University of Georgia Law School  
Professor Larry Thompson's Course  
(no written text)
- 3/23/01 Panel Discussion on the Senate Confirmation Process  
Washington University of St. Louis  
Professor Kathleen Clark's Class  
Other panelists: Eliot Minberg, Amitai Etzioni  
(no written text)

Speeches 1997

- 11/20/97 Delivered the Donahue Lecture at Suffolk University Law School.  
First law school alumnus invited to deliver the lecture.  
Speech was expanded into an article. (See publications section)
- 10/30/97 Moderator, Panel Discussion on Congressional Investigations from  
Watergate to Whitewater. Sponsored by the Federal Bar Council and Held  
in the U.S. Courthouse SDNY.  
Other panelists: Richard BenVeniste, Professor Samuel Dash, Leonard  
Garment, Honorable Elizabeth Holzman, and Bernard Nussbaum.

6/27/97      Participated in a panel discussion on "Congressional Investigations" at the Fourth Circuit Judicial Conference. It was part of a symposium on the Independent Counsel Statute. Transcript was published as an article. (See publications section)  
Other panelists: Honorable Charles H. Haden, II, Chief Judge So. Dist. Of W.-Va., and John W. Nields, Jr., Washington, DC

Speeches 1996

10/21/96      San Antonio, Texas  
                   Petroleum Industry Seminar  
                   Topic: Environmental Criminal Enforcement  
                   (no written text)

8/15/96      CLE Program  
                   Houston, Texas  
                   Topic: Environmental Criminal Enforcement  
                   (no written text)

Summer  
 1996      Guest Lecturer on Congressional Investigations  
                   Professor John Podesta's Course in "Congressional Investigations"  
                   Georgetown Law School, Washington, DC  
                   (no written text)

Speeches 1995

8/24/95      CLE Program  
                   Houston, Texas  
                   Oil and Gas Industry Conference  
                   Environmental Criminal Enforcement  
                   (no written text)

Speeches 1993

3/2/93      "Becoming a Lawyer" Seminar at  
                   Catholic University Law School  
                   Professor Katherine Bender's Course  
                   Guest lecture on the legal profession  
                   (no written text)

Speeches 1992

4/13-14/92 Executive Enterprises Seminar on Environmental Litigation  
Panelist: Environmental Criminal Enforcement  
Washington, DC  
(no written text)

Speeches 1991

11/21/91 Clark County Bar Association  
Luncheon Address on Supreme Court Confirmation Process of Justice  
Thomas  
(no written text)

8/28/91 Freshman Orientation Speech  
Suffolk University Law School, Boston, Massachusetts  
(no written text)

6/21/91 CMA Conference  
Speech on Environmental Criminal Enforcement  
New York City  
(No written text)

Speeches 1990

12/11 or  
12/12/90 Co-Chair, CLE – Executive Enterprises, Inc.  
Environmental Enforcement & Litigation Conference  
Panelist: Environmental Criminal Enforcement  
Washington, DC  
(no written text)

10/10/90 CLE Program  
Association of Corporate Counsel's  
Speech on Environmental Criminal Enforcement  
Houston, Texas  
(no written text)

9/24/90 International Association of Drilling Contractors  
Environmental Criminal Enforcement Speech  
New Orleans, Louisiana  
(no written text)

Speeches 1989

- 7/19/89      Environmental & Regulatory Seminar  
Hosted by Baker & Hostetler's Columbus office  
Spoke on Environmental Enforcement  
(no written text)
  
- 6/7/89      Bancroft School (private high school in Worcester, Massachusetts)  
Commencement Address  
(no written text)
  
- 3/3/89      American Bar Association  
Annual White Collar Crime Institute  
Panelist on Environmental Criminal Enforcement  
New Orleans, Louisiana  
(no written text)

Speeches 1988

- 10/13/88    NEIC Conference in Washington, DC  
Speech on Environmental Criminal Enforcement  
(no written text)
  
- 10/6/88    CHR&M Environmental Practice Group Seminar  
Speech on Environmental Criminal Enforcement  
Oakland, California  
(no written text)
  
- 9/26/88    CLE Program  
Speech on Environmental Criminal Enforcement  
Los Angeles, California  
(no written text)
  
- 5/4/88    Federal Bar Association  
Hazardous Waste & Toxic Tort Symposium  
Speech on Criminal Enforcement  
Cleveland, Ohio
  
- 3/11/88    American Bar Association  
White Collar Crime Institute  
Panelist on Congressional Investigations  
New Orleans, Louisiana  
(no written text)

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Very good. My last exam was on July 25, 2001.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Deputy Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, March 1988 to January 1989. (Appointed by Attorney General Meese)

Commissioner, The President's Commission on White House Fellowships, December 1990 to January 1993. (Appointed by President George Bush.)

Commissioner, The Judicial Review Commission on Foreign Asset Control, March 2000 to January 2001. (Appointed by U.S. Congressman Porter Goss, Chairman House Intelligence Committee.)

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:



1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

9/74-8/75 – Law Clerk to Chief Justice McLaughlin and the Associate Justices of the Superior Court of Massachusetts.

9/75-8/76 – Law Clerk to the Honorable Thomas F. Kelleher, Associate Justice of the Supreme Court of Rhode Island.

2. **whether you practiced alone, and if so, the addresses and dates;**

No.

3. **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;**

(See below).

b.

1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

9/76-1/77 – General Attorney, Immigration & Naturalization Service, U.S. Department of Justice (Honors Program).

1/77-8/78 – Special Assistant United States Attorney, Southern District of New York (Civil Division). (Appointed by Robert B. Fiske, Jr.). 1 St. Andrew's Plaza, New York, New York.

Description: Responsible for litigating civil cases in the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit, with a primary focus on immigration litigation. Briefed and argued nine appeals in the Second Circuit. Briefed and argued numerous motions in the U.S. District Court. None of my cases went to trial.

9/78-6/79 – Graduate Student, Harvard Law School LL.M. Program.

7/79-8/83 – Assistant Professor of Law, St. John's University School of Law, New York. Union Turnpike and Utopia Parkway, Jamaica, New York.

Description: Taught courses in Criminal Law, Property, Negotiations, and Legal Research and Writing.

10/83-3/87 – Senior Trial Attorney, United States Department of Justice, Tax Division, Criminal Section. Tenth and Pennsylvania Avenue, N.W., Washington, D.C.

Description: Lead counsel in major criminal tax investigations and prosecutions of national and regional significance. Responsibilities included conducting all phases of complex investigations and litigation, including grand jury, case review, analysis of legal and policy issues, pre-trial motions and trial. Liaison to the President's Drug Task Force Coordinator for the Pacific Northwest. Successfully prosecuted over 20 defendants on tax and other criminal charges. Lead counsel in three of the four cases that went to trial before a jury and in three other cases that pled guilty on the eve of trial. Argued numerous pre and post trial motions.

3/87-3/88 – Deputy Chief Minority Counsel, U.S. House Select Iran-Contra Committee. The Capitol, Washington, D.C.

Description: Participated in all phases of the investigation as the second ranking counsel to Congressman Dick Cheney (R-WY), and the Republican Members of the Committee (i.e. Wm. Broomfield, H. Hyde, J. Courter, Wm. McCollum, and M. DeWine). Principally responsible for those portions of the investigation relating to the NSC, the Vice President, the State Department and the Justice Department. Deposed and interviewed dozens of witnesses, including senior government officials and cabinet officers. Questioned and presented witnesses at the televised hearings, e.g., John M. Poindexter and Robert C. McFarlane. Briefed and prepared Congressmen for their questioning of public witnesses. Edited and drafted portions of the Committee's Minority Report. (Top Secret and SCI Clearances).

3/88-1/89 – Deputy Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice. Tenth & Pennsylvania Avenue, N.W., Washington, D.C.

Description: Responsible for overseeing the 150 plus attorneys in the Environmental Enforcement and Environmental Crimes Section, which are principally responsible for conducting and monitoring all civil and criminal litigation and investigations nationwide, involving the hazardous waste statutes, the Clean Air Act and the Clean Water Act. Also responsible for overseeing the Policy, Legislation and Special Litigation Section. Argued the successful criminal appeal in In re Search of 4801 Fyler Ave., 879 F.2d 385 (8<sup>th</sup> Cir.).

4/89-3/99 – Baker & Hostetler LLP, Washington, D.C. 1050 Connecticut Avenue, N.W., Washington, D.C.

Description: Represented individuals and corporations under investigation by grand juries, congressional committees and executive branch agencies. Counseled individuals and companies in complex litigation, with an emphasis on civil and criminal environmental enforcement, criminal tax and business fraud litigation. Conducted internal corporate investigations and counseled individuals on ethics compliance. Virtually all litigation matters were before federal courts. Criminal defense and investigatory work probably averaged 70 plus percent of the matters handled. Two of the cases I handled went to trial (one civil, one criminal). The overwhelming majority of the criminal matters I handled were either disposed of by guilty pleas or with no charges being brought. Most of the civil matters I handled were settled prior to trial, and on one occasion after extensive meetings with agency attorneys (i.e., U.S. EPA).

2/92-1/93 – Chief Minority Counsel, United States Foreign Affairs Committee “October Surprise” Task Force. Ford House Office Building, Washington, D.C.

Description: Retained by the House of Representatives to serve as the lead counsel and principal staffer of a five attorney/twelve person staff to Congressman Henry Hyde (R-IL), and the Republican Members of the Task Force (i.e. J. Leach, O. Snowe, D. Bereuter, and P. Goss). Responsible for overseeing and directing all aspects of the investigation in coordination with the

Chief Counsel to the Democratic Members. Deposed and interviewed numerous witnesses in the United States and abroad, including former and present senior government officials, and cabinet officers. Presented formal briefings to the Task Force on the status and direction of the investigation. Drafted portions of the Task Force's Joint Report and served as the Minority's chief editor of the report. (Top Secret and SCI Clearances).

7/94-8/94 – Special Counsel (“Whitewater Investigation”), United States House Banking, Finance & Urban Affairs Committee. Rayburn House Office Building, Washington, D.C.

Description: Served as the lead counsel and principal staffer of a four attorney/ten person staff to Congressman Jim Leach (R-IA), and the Republican Members of the Committee during the investigative phase leading up to the hearings and during the hearings themselves. Conducted deposition-like interviews of approximately 40 senior White House, Treasury Department and RTC officials. Extensively briefed and oversaw the preparation of Congressmen and Congresswomen for their questioning of public witnesses.

2/97-9/97 – Special Counsel, United States House Ethics Reform Task Force. c/o U.S. House Ethics Committee, Washington, D.C.

Description: Retained by the House of Representatives to serve as the lead counsel and principal staffer to Co-Chairmen Bob Livingston (R-LA) and Benjamin Cardin (D-MD), and the Republican and Democratic Members, of a bipartisan 12 Member Task Force created to review, evaluate, and propose changes to the process by which ethics complaints are initiated and investigated in the House. The Task Force's comprehensive package of revisions was adopted, with amendments, by the House on September 18, 1997. Prepared and presented over a ten week period extensive briefings to the Task Force. Drafted and edited legislative alternatives to existing rules and Task Force Report to Congress.

5/97-Present – Adjunct Professor of Law, Georgetown University Law Center, 600 New Jersey Avenue, N.W., Washington, D.C.

Description: Co-teach “Congressional Investigations” with John D. Podesta.

3/99-present – Partner, Vorys, Sater, Seymour and Pease LLP,  
1828 L Street, N.W., Washington, D.C.

Description: Represent individuals and corporations under investigation by grand juries, congressional committees and executive branch agencies. Lead counsel in complex litigation, with an emphasis on civil and criminal environmental enforcement, criminal tax and business fraud litigation. Conduct internal corporate investigations and counsel individuals on ethics compliance. Partner in charge of the White Collar Crime and Congressional Investigations practice areas in the Washington office. Virtually all litigation matters are before Federal Courts. Criminal defense and investigatory representations probably account for 70 plus percent of the matters handled.

3/00-1/01 – Commissioner, Judicial Review Commission on Foreign Asset Control. 1331 F Street, N.W., Washington, D.C.

Description: Appointed by Porter Goss (R-FL), Chairman of the U.S. House Permanent Select Committee on Intelligence, as a member of a five person, bipartisan, House/Senate Commission to review and evaluate all judicial, regulatory and administrative authorities relating to the blocking of assets of foreign persons by the United States Government and the remedies available to United States companies and persons affected by the same. The Commission, which was chaired by Larry D. Thompson, participated in extensive briefings with senior law enforcement officials, conducted detailed public hearings in the House and Senate. It submitted an extensive written report in January 2001 on its activities, including its findings, conclusions and recommendations, to the Intelligence, Judiciary, and International Relations Committees of the House and to the Intelligence, Judiciary and Foreign Relations Committees of the Senate. (Top Secret and SI, TK and G Clearances).

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

(See above).

1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

The frequency of my appearances in court have varied greatly depending upon the position I held. When I served in the U.S. Attorney's office in New York City (January 1977 to August 1978) and in the Criminal Section of the Tax Division at the Department of Justice (September 1983 to March 1987), I appeared in court frequently. When I served as a law professor at St. John's University and as the Deputy Chief Minority Counsel to the House Select Iran-Contra Committee, I did not appear in court at all. When I served as a Deputy Assistant Attorney General from March 1988 to January 1989, I appeared in court only once to argue an appeal in the U.S. Court of Appeals for the Eighth Circuit.

With respect to private practice, over the past 12 years I have appeared in court, occasionally, depending upon the type of case.

2. **What percentage of these appearances was in:**
- (a) **federal courts;**
  - (b) **state courts of record;**
  - (c) **other courts.**

Virtually all of my appearances in private practice have been in varying federal courts around the country. The only state court I appeared in was for one particular case in Maryland.

As a federal prosecutor and Special Assistant U.S. Attorney, all of my appearances were in the federal courts.

3. **What percentage of your litigation was:**
- (a) **civil;**
  - (b) **criminal.**

If you combined my litigation experience in both the public and private sectors, I would approximate that the

percentage of my litigation experience was 75 percent criminal and 25 percent civil.

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

The number of cases in courts of record that I have tried to a verdict, or judgment, would be five. I was the lead counsel in four of the five cases. I was co-counsel in the fifth case; a five week criminal trial in which I split evenly the responsibility of presenting the eighty witnesses for the United States, and the various arguments pre, post and during the trial.

I would note further, however, that I served as lead counsel in a sixth case that was litigated extensively in the U.S. District Court for the District of Columbia and ultimately tried for 4 weeks before a three judge panel of arbitrators.

5. **What percentage of these trials was:**

- (a) jury;  
(b) non-jury.

One hundred percent if you do not include the four week arbitration trial. If you include that trial, then eighty three percent jury and seventeen percent non-jury.

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. **United States v. Franklyn Perry** (D Nevada)  
No. CR-LV 84-118 – HDM (Jury Trial: 12/84 – 1/85)

Honorable Howard D. McKibben  
U.S. District Judge, Nevada, presiding

Counsel for the United States: Robert P. Dickerson (lead counsel)  
AUSA, Las Vegas, Nevada

Richard J. Leon  
Trial Attorney  
Tax Division,  
Criminal Section  
Washington, DC

Counsel for Defendant: J. Tony Serra, Esq.  
San Francisco, CA

Franklyn Perry was prosecuted for a variety of crimes arising out of a series of ponzi type schemes that he used to defraud hundreds of investors throughout the Southwestern United States of tens of millions of dollars of income. Mr. Perry was indicted, and convicted, of tax evasion, mail fraud, wire fraud and obstruction of an investigation. The jury trial lasted over four weeks. Although I was not the lead counsel, I examined half of the approximately 80 witnesses we presented and I presented the opening summation for the government. Mr. Perry was convicted on all counts and was sentenced to twenty five years in prison, which at that time was the longest sentence in the history of the Tax Division for a criminal tax case. I received letters of commendation from FBI Director Webster and IRS Commissioner Eggert. I also received the Tax Division's Outstanding Attorney award. The conviction was upheld on appeal in the Ninth Circuit (unpublished opinion). Postscript: On two occasions after his incarceration, the U.S. Marshal Service received information indicating that Mr. Perry had attempted to hire somebody to kill the judge and the two prosecutors.

Relevant Addresses and Phone Numbers:

Honorable Howard D. McKibben  
Chief Judge, U.S. District Court, Nevada  
(775) 686-5880



Robert P. Dickerson, Esq.  
Dickerson, Dickerson, Consul and Pocher  
Suite 350  
777 North Rainbow Blvd.  
Las Vegas, Nevada 89101  
(702) 388-8600

J. Tony Serra, Esq.  
506 Broadway  
San Francisco, California 94133  
(415) 986-5591

2. United States v. Dominic Fontiere (C.D. of California)  
Docket No. CR 86-545 WDK (disposition by plea)

Honorable William D. Keller  
U.S. District Judge, Central District of California, presiding

Counsel for the United States: Richard J. Leon (lead counsel 1986)  
Sam Strother (co-counsel 1986)  
Tax Division, Criminal Section

Bruce J. Kelton (lead counsel 1984-1985)  
Deputy Chief, Organized Crime  
Strike Force, LA

Counsel for Dominic Fontiere: Bruce I. Hochman (lead counsel)  
Richard Marmaro  
Hochman, Salkin & DeRoy  
Beverly Hills, California

Stephen V. Wilson (1984-1985)  
Hochman, Salkin & DeRoy

The Department of Justice's Organized Crime Strike Force in Los Angeles conducted a lengthy investigation into possible criminal charges arising out of Super Bowl ticket scalping by NFL team owners and/or personnel. In 1985 I was assigned to assist the Deputy Chief of the Strike Force, Bruce Kelton, who was heading up the investigation. When Mr. Kelton left the Department of Justice to enter private practice in January 1986, I became the lead counsel in the investigation. A senior Tax Division prosecutor, Sam Strother, was assigned to assist me several months later.

On June 19, 1986, the grand jury indicted Dominic Frontiere the husband of Los Angeles Rams owner Georgia Rosenbloom Frontiere for three felonies: two counts of filing false income returns and one count of making false statements to federal agents. Because of Mr. Frontiere's prominence in both the athletic and entertainment world (i.e., he was an Emmy Award winning composer and conductor who had been the director of music at Columbia Pictures) the case received tremendous visibility in Southern California and in the national sports press. The case was prepared for trial and litigated during the post-indictment pre-trial phase. One week prior to trial, Mr. Frontiere decided to plead guilty to two of the three felony counts. He was sentenced in October 1986 to 12 months incarceration. Throughout the investigation, pre-indictment phase and post-indictment trial preparation phase, we constantly briefed the local U.S. Attorney, Robert Bonner on the status of the case, as well as the Assistant Attorney General of the Tax Division, Roger Olsen. As lead counsel, I was principally responsible for the preparation of the indictment, the trial preparation, and the drafting and arguing of the pretrial motions and the sentencing argument.

Relevant Addresses and Phone Numbers:

Honorable William D. Keller  
U.S. District Judge, C.D. California  
(213) 894-2659

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Suite 300  
2029 Century Park East  
Los Angeles, California 90067  
(310) 551-6781

Sam L. Strother, Esq. (retired)  
Arlington, Virginia  
(703) 521-3139

Honorable Robert L. Bonner, esq.  
Gibson, Dunn & Crutcher  
333 South Grand Avenue  
Los Angeles, California 90071  
(213) 229-7000

Honorable Roger M. Olsen, Esq. (retired)  
c/o Zuckerman, Spaeder  
1201 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 778-1800

Bruce I. Hochman (deceased)

Honorable Stephen V. Wilson  
U.S. District Judge, C.D. of California  
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Richard Marmaro, Esq.  
Proskauer Rose LLP  
Suite 3200  
2049 Century Park East  
Los Angeles, California 90067  
(310) 557-2900

3. **United States v. Otto and Matti Hurst** (D. Nevada)  
Docket No. 86-1111 (Jury Trial, January 1986)

Honorable Howard D. McKibben, presiding  
U.S. District Judge, Nevada

Counsel for the United States: Richard J. Leon (lead counsel)  
Tax Division, Criminal Section

Robert M. McCallum  
Tax Division, Criminal Section

Counsel for the Hursts: Henry R. Gordon  
Las Vegas, Nevada

In 1985 the Tax Division decided to experiment in two areas of the country with a new technique to combat tax protester movements: the simultaneous investigation and prosecution of a large number of protesters in the same geographic area with one or more common background traits.

To that end, I was assigned as the lead counsel to conduct a grand jury investigation into a tax protester movement that had developed within

the International Brotherhood of Electrical Workers Union Local 367 in Las Vegas, Nevada. The investigation focused on 11 of the 500 union members suspected of involvement in that movement and four of their wives. Otto Hurst, who was the ring leader of the movement, was the second ranking official in the union, which at that time was the largest union in Las Vegas. The investigation culminated in the conviction of all 15 individuals. Five of the fifteen went to trial (i.e., Otto and Matti Hurst, Harold and Junbeth Altman and Jim Bergman), the others pled guilty.

The Hursts were tried together and their trial was the culmination of the year and a half investigation. The jury trial lasted for approximately a week and both Mr. and Mrs. Hurst were convicted of five counts of tax evasion. Mr. Hurst was sentenced to four years in prison for his conduct. As lead counsel, I oversaw all aspects of the investigation, the trial preparation, the pre and post trial motions and the trial itself. I examined half of the approximately 25 witnesses we presented. I cross examined Mr. Hurst and presented the final summation. The convictions were upheld on appeal in the Ninth Circuit (unpublished opinion).

Relevant Addresses and Phone Numbers:

Honorable Howard D. McKibben  
Chief Judge, U.S. District Court, Nevada  
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Henry R. Gordon, Esq.  
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300 Fremont  
Las Vegas, Nevada 89101  
(702) 384-8831

4. United States v. Harold and Junbeth Altman (D. Nevada)  
Docket No. 85-1291 (Trial by Jury May 1985)

Honorable Lloyd D. George  
U.S. District Judge, Nevada

Counsel for the United States: Richard J. Leon (lead counsel)  
Tax Division, Criminal Section

Robert M. McCallum  
Tax Division, Criminal Section

Counsel for the Defendant  
Harold Altman:

William Tidwell  
Las Vegas, Nevada

Counsel for Defendant  
Junbeth Altman

Randall Pike  
Las Vegas, Nevada

This trial, which lasted one week, was the first in a series of trials arising out of an investigation into a tax protester ring operating out of the International Brotherhood of Electrical Workers Union in Las Vegas, Nevada. Mr. & Mrs. Altman were indicted for willfully failing to file their 1980 and 1981 income tax returns and with willfully filing fraudulent refund claims for the tax years 1976 through 1979. Mr. Altman was convicted on all 6 counts. Mrs. Altman was convicted of the two failure to file counts, but the jury was hung on the four counts of fraudulent claims for refunds. The court, therefore, declared a mistrial as to those four counts. Mr. Altman was sentenced to 18 months incarceration and Mrs. Altman was sentenced to home detention. The convictions were upheld on appeal in the Ninth Circuit (unpublished opinion).

Relevant Addresses and Phone Numbers:

Honorable Lloyd G. George  
Senior Judge, U.S. District Court, Nevada  
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Randall Pike, Esq.  
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Las Vegas, Nevada  
(702) 671-4262

William Tidwell, Esq.  
520 So. Fourth Street  
Suite 300  
Las Vegas, Nevada  
(702) 385-7170

5. United States v. Jim Bergman (D. Nevada)  
Docket No. 86-1102 (Jury Trial December 1995)

Honorable Philip Pro  
United States Magistrate  
Las Vegas, Nevada

Counsel for the United States: Richard J. Leon (lead counsel)  
Tax Division, Criminal Section

Robert M. McCallum  
Tax Division, Criminal Section

Counsel for the Defendant: Alan R. Harter  
Las Vegas, Nevada

The defendant was indicted for failing to file income tax returns, and was convicted by a jury on all counts after a three day trial. This trial was the second of three arising out of an experimental tax protester enforcement program aimed at large and highly visible protester rings. As lead counsel I oversaw all aspects of the pretrial preparation and motions practice. During the trial, I argued the summation and presented half or more of the witnesses. The case was upheld on appeal in the Ninth Circuit. (United States v. Bergman, 813 F.2d 1027 (9<sup>th</sup> Cir. 1987))

Relevant Addresses and Phone Numbers:

Honorable Philip Pro  
U.S. District Judge, Nevada  
Las Vegas, Nevada  
(702) 388-6942

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Alan R. Harter, Esq.  
500 No. Rainbow  
Suite 115A  
Las Vegas, Nevada  
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6. United States v. Donald P. Percival and James S. Chapman (E.D. of Virginia) Criminal Action No. 89-306A (Jury Trial November 6-10, 1989)

Honorable James C. Cacheris  
U.S. District Judge, E.D. of Virginia

Counsel for the United States: Paul G. Cassell, (lead counsel)  
Assistant U.S. Attorney, E.D., Va.

Marcus Davis  
Special Assistant U.S. Attorney  
E.D., Va.

Counsel for James S. Chapman Richard J. Leon (lead counsel)  
Gregory A. Paw  
Baker & Hostetler LLP  
Washington, D.C.

Counsel for Donald P. Percival Thomas Hylden (lead counsel)  
Sachs Greenbaum & Taylor  
Washington, D.C.

I represented James S. Chapman, a retired Sargent on the U.S. Secret Service Police Force, from September 1989 until August 1993 in a two count case in which he was charged with one count of conspiracy to violate federal firearms laws and one count of an unlawful firearm sale in violation of 18 U.S.C. § 922(b)(3). I was the lead counsel for Mr. Chapman and was assisted by a second year associate, Gregory A. Paw. I oversaw and participated in the drafting of all pretrial motions and I handled all aspects of the weeklong jury trial before Judge James C.

Cacheris (opening, summation, the direct and cross examinations of all witnesses as appropriate). I also argued all of the pretrial and post trial motions and the sentencing argument. I drafted significant portions of and edited the entire, appellate brief. I argued the appeal in the Fourth Circuit. The trial consisted of approximately 28 witnesses, including the two defendants. Mr. Chapman was convicted of both the conspiracy and the illegal sale of a firearm to an undercover ATF agent. He was sentenced to six months in prison, and fined \$3,000. The conviction was upheld on appeal in the Fourth Circuit. (United States v. Chapman and Percival, 932 F.2d 964 (4<sup>th</sup> Cir. 1991). Certiorari was denied by the U.S. Supreme Court.

Relevant Addresses and Phone Numbers:

Honorable James C. Cacheris  
Senior Judge, U.S. District Court (E.D. of Virginia)  
(703) 299-2110

Paul G. Cassell  
Professor, University of Utah College of Law  
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Marcus J. Davis (retired)  
Former AUSA, E.D. of Virginia  
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Thomas Hylden, Esq.  
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Washington, DC 20006  
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7. Stephen A. Goldberg Company v. Texaco, Inc. (D. District of Columbia)  
Civil Action No. 90-0488 LFO



Honorable Louis F. Oberdorfer  
 U.S. District Judge, District of Columbia  
 (litigated before the court from 3/90 – 7/92)

Arbitration Panel:

William R. Perlik (Chair), Wilmer Cutler & Pickering  
 Honorable Fred Fielding, Wiley Rein & Fielding  
 Honorable Alfred H. Moses, Covington & Burling

Counsel for the Plaintiff:

Marc Fleischaker  
 James H. Hulme (lead trial counsel)  
 Donald Mitchell  
 Lawrence E. Blatnick  
 Arent, Fox, Kintner, Plotkin & Kahn  
 Washington, DC

Counsel for Defendant:

Richard J. Leon (lead counsel)  
 Frederick W. Chockley, III  
 Christina R. Silva  
 Baker & Hostetler LLP  
 Washington, DC

I was the lead counsel for a team of attorneys at Baker & Hostetler that represented Texaco, Inc. in a lawsuit before the Honorable Louis Oberdorfer. The plaintiff, Stephen A. Goldberg Company (“Goldberg”), a large real estate development company in Washington, was suing Texaco for gasoline contamination of soil and groundwater to certain real property next to the Convention Center in downtown Washington. The legal theories advanced by Goldberg included: strict liability, negligence per se, restitution, private nuisance, trespass and negligence. Goldberg was seeking in excess of \$12 million dollars in damages. The case was exhaustively litigated before Judge Oberdorfer, from March 1990 up until July of 1992 when the parties, upon the urging of the court, entered into an agreement to submit the case for binding arbitration. A three judge panel of leading attorneys in Washington DC was convened (William R. Perlik of Wilmer Cutler, & Pickering, chaired the panel). The case was tried before the arbitrators during the Fall of 1992 and the early Winter of 1993. It consumed approximately 18 trial days. As lead counsel in the case I was responsible for the overall strategy and management of the case. I was assisted by a then senior associate, Frederick W. Chockley, III and a young associate Christina R. Silva. I conducted depositions, edited and

drafted key pleadings and argued certain motions before the court. As lead counsel, I questioned over half of the witnesses and delivered the summation for Texaco. In March 1993, the arbitrators awarded a judgment of approximately \$2.9 million for the Stephen A. Goldberg Company. Thereafter, on June 8, 1993 the parties filed a stipulation dismissing the case with prejudice.

Relevant Addresses and Phone Numbers:

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Senior Judge, U.S. District Court, District of Columbia  
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Honorable Fred Fielding, Esq.  
Wiley Rein & Fielding  
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Honorable Alfred H. Moses, Esq.  
Covington & Burling  
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Opposing Counsel:

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James H. Hulme, Esq.  
Donald B. Mitchell, Jr., Esq.  
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Lawrence E. Blatnick, Esq.  
(address unknown)

Co-Counsel:

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Christina R. Silva, Esq.  
Blue Cross & Blue Shield  
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125<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
(412) 255-8194

8. **United States v. Pillsbury Company** (W.D. of Missouri)  
Docket No. (Guilty plea entered 10/22/90)

Honorable James England  
U.S. Magistrate, W.D. Missouri

Counsel for the United States:

David C. Jones  
AUSA, Western District of Missouri  
Springfield, MO

Counsel for Pillsbury:

Gordon Ankney (co-counsel)  
Thompson & Mitchell  
St. Louis, MO

Richard J. Leon (co-counsel)  
Baker & Hostetler LLP  
Washington, DC

David F. Fisher (In-house counsel)  
Group Counsel  
Pillsbury Company  
Minneapolis, MO

I served as co-counsel to the Pillsbury Company in a grand jury investigation and prosecution into the illegal discharge of a pollutant by employees into a creek in Joplin, Missouri which occurred as a part of the closing of a Pillsbury plant in 1989. As co-counsel in the case, I met and worked extensively with the in-house counsel of Pillsbury, David Fisher, and the local counsel in Missouri, Gordon Ankney. We in turn met and negotiated on a number of occasions with AUSA Jones in an effort to reach a possible disposition of the case. In addition, I made a presentation to the Department of Justice, both in person and in writing, regarding various legal and policy issues raised by the case, including the applicability of the responsible corporate officer doctrine. The company ultimately pled guilty on October 22, 1990 to a one count misdemeanor violation of the Clean Water Act for the illegal discharge of a pollutant into a navigable water of the United States. It was fined \$275,000, which was divided between the State of Missouri and the federal government.

Relevant Addresses and Phone Numbers:

Honorable James England  
U.S. Magistrate W.D. of Missouri  
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David C. Jones  
AUSA, Springfield, Missouri  
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Gordon Ankney, Esq.  
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Hon. David F. Fisher, Esq.  
Commissioner of Administration  
State of Minnesota  
Room 200  
50 Sherburne Avenue  
St. Paul, Minnesota 55155  
(651) 296-1424

9. United States v. Joseph G. & Nicholas G. Miller (N.D. of Ohio)  
Docket No. 3: 96 CR00778-001 and 3: 96 CR0078-002

Honorable David A. Katz  
U.S. District Judge, Northern District of Ohio

Counsel for the United States: David A. Bauer  
Supervisory Assistant U.S. Attorney,  
N.D. of Ohio  
Toledo, Ohio

Counsel for Defendants: Richard J. Leon (lead counsel)  
H. Karl Zeswitz, Jr.  
Baker & Hostetler  
Washington, DC

I represented Joseph G. and his son Nicholas G. Miller throughout a lengthy and highly complex IRS criminal tax investigation from 1993 to 1997 into possible criminal tax offenses against each of them individually and the large privately held company that they owned. Their company was at that time one of the largest video rental chains in the nation; operating over 50 stores in Ohio, Michigan, and Indiana.

The investigative phase required numerous document productions pursuant to administrative subpoenas and numerous meetings with the IRS agent handling the case. There were many complicated accounting and technical tax issues. The case was authorized for prosecution by the Tax Division at the Department of Justice in September 1995, and it was transferred to the U.S., Attorney's office in Toledo for prosecution. From that point forward, I had numerous meetings with the AUSA handling the case in an effort to resolve it in a manner mutually acceptable to my clients and the government. On January 19, 1997, Mr. Miller and his son Nicholas each waived their right to an indictment and each pled guilty to a three count information, charging each with two counts of income tax evasion and one count of aiding and assisting in the preparation of a false corporate tax return. On April 25, 1997, after extensive briefings, Judge Katz sentenced each of the Millers to a period of home confinement, probation thereafter, and required each to pay substantial fines for their offenses.

Relevant Addresses and Phone Numbers:

Honorable David A. Katz  
U.S. District Judge N.D. of Ohio  
Toledo, Ohio  
(419) 259-7488

David O. Bauer  
Supervisory Assistant U.S. Attorney, N.D. of Ohio  
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H. Karl Zeswitz, Jr., Esq.  
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(202) 383-0518

10. Ellen Sauerbrey et al v. State Administrative Board of Election Laws, et al. (In the Circuit Court for Anne Arundel County) Civil No. C-94-17721-CC

Honorable Raymond G. Thieme, Jr.  
Circuit Judge, presiding

Counsel for the Plaintiffs:  
(12/7/94 – 1/7/95)

Lee T. Ellis, Jr., Esq. (lead counsel)  
Richard J. Leon, Esq.  
Ralph Blasey, Esq.  
Tracey McPherson, Esq.  
Gregory A. Paw, Esq.  
Baker & Hostetler LLP  
Washington, DC

John M. Carbone, Esq.  
c/o Sauerbrey HDQ  
Cockeysville, MD

Counsel for State Agencies:

Ralph S. Tyler, Esq.  
Deputy Attorney General  
Baltimore, MD  
for State Administrative  
Board of Election Laws

<u>Counsel for Glendening and Townsend</u> :	George A. Nilson, Esq. Robert C. Douglas, Esq. Piper & Marbury Baltimore, MD  Bruce L. Marcus, Esq. Marcus & Bonsib Greenbelt, MD  John Hardin Young, Esq. Washington, DC  Joseph Sandler, Esq. Democratic National Committee Washington, DC
<u>Counsel for Prince Georges County Board of Elections Supervisors:</u>	Eric H. Nyce, Esq. Upper Marlboro, MD
<u>Counsel for Montgomery County Board of Elections</u> :	John P. Diuguid, Esq. Washington, DC
<u>Counsel for the United States</u> :	Honorable Lynne A. Battaglia United States Attorney for the District of Maryland

My partner Lee Ellis and I, together with several associates, represented the Republican Gubernatorial Candidate, Ellen Sauerbrey, and her running mate, in their historic challenge to the election contest in 1994 against Paris Glendening and his running mate. That election was the closest gubernatorial contest in Maryland's history and the challenge was the first ever brought in a gubernatorial contest in the history of Maryland.

Circuit Judge Thieme, with the consent of counsel, set an extraordinarily abbreviated discovery schedule in order to insure the completion of a challenge and an appeal prior to the scheduled inauguration of a new governor in January 1995. The discovery process took place during the last 2 weeks of December 1994 and the first week of January 1995. The trial was set for January 9, 1995.

Although I was the engagement attorney in the case due to my preexisting relationships with the RNC's general counsel's office, my partner Lee Ellis, a seasoned Maryland state litigator, was the logical choice to be our lead counsel. As his co-counsel, I participated extensively in all phases of the discovery and the preparation process for what would be the first televised trial in Maryland's history. I reviewed and edited pleadings, took and defended depositions, negotiated issues with opposing counsel and counseled our clients, and their staff, regarding the strategy and direction of the litigation. I participated in a number of court hearings.

Due to reasons we are not at liberty to discuss, Mr. Ellis and I, on behalf of our firm and with the permission of the court, withdrew as counsel for the plaintiffs on January 7, 1995. Thereafter, we assisted in the orderly transition of the case to new counsel.

Relevant Addresses and Phone Numbers:

Honorable Raymond G. Thieme, Jr.  
Judge, Court of Special Appeals of Maryland  
(410) 260-1520

Honorable Lynne A. Battaglia  
Judge, Maryland Court of Appeals  
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John Hardin Young, Esq.  
Washington, DC

Joseph Sandler, Esq.  
Democratic National Committee  
430 S. Capitol Street, S.E.  
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(202) 863-8000

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. **Special Counsel,**  
**U.S. House Ethics Reform Task Force**  
**February 1997 to September 1997**

Retained by the House of Representatives to serve as the lead counsel and principal staffer to Co-Chairmen Bob Livingston (R-LA) and Benjamin Cardin (D-MD), and the Republican and Democratic Members, of a bipartisan 12 Member Task Force created to review, evaluate, and propose changes to the process by which ethics complaints are initiated and investigated in the House. The Task Force's comprehensive package of revisions was adopted by the House, with amendments, on September 18, 1997. I prepared and presented extensive briefings, over a 10 week period to the Task Force in executive session. I drafted legislative alternatives to the existing rules, and significant portions of the Task Force Report to Congress.

2. **Deputy Chief Minority Counsel,**  
**U.S. House Select "Iran-Contra" Committee**  
**March 1987 to March 1988**

Participated in all phases of the investigation as the second ranking counsel to Congressman Dick Cheney (R-WY), and the Republican Members of the Committee (i.e. Wm. Broomfield, H. Hyde, J. Courter, Wm. McCollum, and M. DeWine). Principally responsible for those portions of the investigation relating to the NSC, the Vice President, the State Department and the Justice Department. Deposed and interviewed dozens of witnesses, including senior government officials and cabinet officers (e.g., the Secretary of State, the Attorney General of the United States, etc.). Questioned and presented witnesses at the televised hearings, (e.g., John M. Poindexter and Robert C. McFarlane, etc.). Briefed and prepared Congressmen for their questioning of public witnesses. Edited and drafted portions of the Committee's Minority Report. (Top Secret and SCI Clearances)

3. **Chief Minority Counsel,**  
**U.S. House Foreign Affairs Committee "October Surprise" Task Force**  
**February 1992 to January 1993**

Retained by the House of Representatives to serve as the lead counsel and principal staffer of a five attorney/twelve person staff to Congressman Henry Hyde (R-IL), and the Republican Members of the Task Force (i.e. J. Leach, O. Snowe, D. Bereuter, and

P. Goss). Responsible for overseeing and directing all aspects of the investigation in coordination with the Chief Counsel to the Democratic Members. Deposed and interviewed dozens of witnesses in the United States and abroad, including former President Jimmy Carter and former senior government officials, and cabinet officers, (e.g., Hon. Henry Kissinger and Hon. Edwin Meese III). Presented formal briefings to the Task Force on the status and direction of the investigation. Drafted portions of the Task Force's Joint Report and served as the Minority's chief editor of the report. (Top Secret and SCI Clearances).

4. **Special Counsel, U.S. House Banking Finance and Urban Affairs Committee**  
**"Whitewater" Investigation**  
**July 1994 to August 1994**

Served as the lead counsel and principal staffer of a four attorney/ten person staff to Congressman Jim Leach (R-IA), and the Republican Members of the Committee during the investigative phase leading up to the hearings and during the hearings themselves. Conducted deposition-like interviews of approximately 40 senior White House, Treasury Department and RTC officials (e.g., Bernard Nussbaum, Mack McClarty and John Podesta, etc.). Briefed and prepared Congressmen and Congresswomen for their questioning of public witnesses during the two weeks of televised hearings.

5. **Commissioner, Judicial Review Commission on Foreign Asset Control**  
**March 2000 to January 2001**

Appointed by Porter Goss (R-FL), Chairman of the U.S. House Permanent Select Committee on Intelligence, as a member of a five person, bipartisan, House/Senate Commission to review and evaluate all judicial, regulatory and administrative authorities relating to the blocking of assets of foreign persons by the United States Government and the remedies available to United States companies and persons affected by the same. The Commission, which was chaired by Larry D. Thompson, participated in extensive briefings with senior government officials, conducted public hearings in the House and Senate, and submitted a written report in January 2001 on its activities, including its findings, conclusions and recommendations, to the Intelligence, Judiciary, and International Relations Committees of the House and to the Intelligence, Judiciary and Foreign Relations Committees of the Senate. (Top Secret and SI, TK and G Clearances).

6. Member, Admissions & Grievances Committee  
U.S. Court of Appeals for the District of Columbia Circuit  
1994 to 2000

I was appointed in 1994 by the U.S. Court of Appeals for the District of Columbia Circuit to serve a three year term on its Admission and Grievances Committee. I was reappointed to a second term in 1997. During my six years of service (the maximum allowed) the Committee met periodically and reviewed complaints referred to it by the court regarding certain members of its bar. Occasionally, we would conduct hearings into allegations brought and hear arguments from the party under investigation. On several occasions, I authored an opinion on behalf of the committee embodying the recommended disposition of the matter to the court.

7. Assistant Professor of Law, St. John's University School of Law, New York  
September 1979 to August 1983

Adjunct Professor of Law, Georgetown University Law Center, Wash., D.C.  
May 1997 to present

Trial Advocacy Instructor and Lecturer, The Attorney General's Advocacy  
Institute

Over the past twenty years I have had the opportunity to actively participate in the training and education of young attorneys. As a full-time and part-time law professor, I have had an extensive opportunity to develop and hone my skills in analyzing and explaining complicated legal and factual matters so that they would be readily understood by the entire range of students before me. As an instructor at the Attorney General's Advocacy Institute, I have had the pleasure of helping aspiring trial lawyers develop the techniques and skills necessary to succeed in a courtroom. I believe all three of these experiences would be valuable in dealing with the wide range of attorneys that would appear before me, as well as in assisting the jurors who would be looking to me to educate them as to the applicable laws and procedures.

Finally, as a corollary to my teaching experience, I believe the effort I have expended over the past twenty years authoring articles, and a book chapter, on various topics, would also be valuable experience for the responsibility that judges have to issue opinions on complex matters in a manner understandable by a diverse audience.

8. United States v. Tennessee Gas Pipeline Company and Tenneco, Inc.

From 1993 to 1995 I served as a lead member of a small team of outside attorneys that counseled Tenneco, Inc., and its subsidiary Tennessee Gas Pipeline Co., and negotiated on its behalf with Region IV of the U.S. EPA, a consent agreement and

consent order that settled a multiregional administrative penalty action concerning contamination by PCB and other constituents at 42 compressor stations along its 16,000 mile pipeline system. This agreement was, at that time, the largest administrative penalty case ever successfully brought by EPA under the Toxic Substances Control Act (TSCA).

In addition, during the same period, I counseled and assisted the company in the negotiation of an administrative order on consent (AOC) under CERCLA to effectuate a cleanup of PCB contamination along most of its pipeline. EPA calculated in 1994 that the likely cost of this cleanup would be \$240 million, thereby making the settlement the largest in the history of the CERCLA program.

Bringing about an acceptable settlement of both of these matters was highly complicated both legally and scientifically. In addition, it was greatly complicated by the fact that there were multiple state environmental agencies, and multiple US EPA regions involved. Often times the various agencies had competing interests and positions. To say the least, there was no clear formula to bring about these results and my involvement consumed hundreds of hours of my time during each of those years.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the standard procedures in place at the U.S. District Court, as approved by the Federal Judicial Center, to determine financial and other possible conflicts of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have committed to co-teach with John Podesta the "Congressional Investigations" course at Georgetown Law School in the Fall Semester 2001. This will be the fifth consecutive year we have taught this course together. I have also committed to teach the same course, alone, at the Catholic University Law School in the Spring Semester 2002. If confirmed, I would reevaluate the burden of teaching the course one night a week, against my new duties as a judge.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so,

copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Ethics in Government Act Form attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

## FINANCIAL STATEMENT

## NET WORTH

**I. ASSETS**

Cash on hand and in banks:	\$8,275.00
U.S. Government securities-add schedule:	0
Listed securities-add schedule:	Riggs Bank Stock: \$1,729.00
Unlisted securities—add schedule:	0
Accounts and notes receivable:	0
Due from relatives and friends:	
Due from others:	
Doubtful:	
Real estate owned-add schedule:	\$425,000 (estimated value)
Real estate mortgages receivables:	0
Autos and other personal property:	1995 Volvo (estimated value \$12,000) 1987 Volvo (estimated value \$4,000)
Cash value-life insurance	0
Other assets itemize:	
Household items:	\$40,000 (estimated value)
401 K Retirement Account:	\$115,681
Total Assets:	\$606,685

**II. CONTINGENT LIABILITIES**

As endorser, comaker or guarantor:	0
On leases or contracts:	0
Legal claims:	0



Provision for Federal Income Tax:	N/A
Other special debt:	0

### III. LIABILITIES

Notes payable to banks-secured:	\$243,287 – ABN AMRO – home mortgage \$ 30,233 – Riggs Home Equity Line \$ 4,246 – DOJ Federal Credit Union (Auto Loan)
Notes payable to banks-unsecured:	\$ 11,499 – Riggs Line of Credit \$ 9,466 – DOJ Federal Credit Union Line of Credit \$ 7,154 – Bank of America Line of Credit
Notes payable to others:	See Attached
Accounts and bills due:	See Attached
Unpaid income tax:	0
Other unpaid income and interest:	0
Real estate mortgages payable-add schedule:	0
Chattel mortgages and other liens payable:	0
Other debts-itemize:	0
Total Liabilities:	\$366,597
Net Worth:	\$240,088
Total liabilities and net worth:	

### IV. GENERAL INFORMATION

Are any assets pledged? (Add) schedule: 0

Are you a defendant in any suits or legal actions? No

Have you ever taken bankruptcy? No

**III. LIABILITIES (CONTINUED)**

Notes payable to others:	Citifinancial (balance on loan \$5,426)	
Accounts and bills due:	Credit Card balances:	
	MBNA	\$28,545
	Citibank	\$ 3,983
	CapOne	\$ 1,391
	Optima	\$ 1,968
	Amex (S/T)	\$ 8,764
	Exxon	\$ 1,534
	Department Stores:	
	Nordstrom	\$ 2,354
	Sears	\$ 1,304
	Brooks Bros.	\$ 984
	Bloomingdale	\$ 1,967
	Neimans	\$ 624
	Hechts	\$ 579
	Lord & Taylor	\$ 355
	Saks	\$ 192
	Talbots	\$ 742

## III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

With the exception of the academic year I was a graduate student at the Harvard Law School, I spent the first 14 years of my legal career working full-time in public service. As a law clerk, prosecutor, law professor and congressional counsel, my sole focus was aimed towards the betterment of our society, legal systems, and profession.

When I entered private practice in 1989, I was committed to finding additional opportunities to be involved on a part-time basis in public service. Fortunately, I have had a number of opportunities to do so during the past 12 years. For example, on three occasions, I have had the honor to serve as counsel to the U.S. House of Representatives on highly sensitive matters of national significance. On one of these occasions, I took a leave of absence from my law firm to work full-time for the House Banking Committee, on the other two occasions, I served as an outside counsel to two House Task Forces, billing my time at rates substantially below my normal rate.

In addition, I have been fortunate enough to serve as a commissioner on both an executive branch and congressional branch commission. From 1990 to 1993 I served as a member of the White House Fellows Commission by appointment of President George Bush. Since then, I have on four other occasions chaired the Regional Finals selection panel for the White House Fellows Program. From 2000 to 2001, I served as a member of the Judicial Review Commission on Foreign Asset Control which was established by the Congress in 1999 to advise it with respect to certain highly sensitive law enforcement and national security legislation.

With respect to the legal professional, I have been continuously involved, on a pro bono basis, in legal education over the past twenty years. In addition to organizing and heading two law school alumni organizations (e.g., New York City and Washington, DC) I served on the Board of Trustees of my alma mater for eight years. Moreover, during the past four years, I have stayed involved in legal education by co-teaching a course at Georgetown Law School with John D. Podesta.

Finally, with respect to our local bar, I served on a pro bono basis for two terms (the maximum possible) as a member of the Admissions & Grievances Committee of the U.S. Court of Appeals for the District of Columbia Circuit. This committee is

responsible for dealing, in essence, with all ethical complaints brought against members of the bar of the Court of Appeals for the District of Columbia Circuit.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

No, there is no selection commission in the District of Columbia. The selection process in which I participated consisted of the following: I was interviewed by the Counsel to the President at the White House in March 2001. He was accompanied by one of his Associate White House Counsel. In April, 2001, I met with Mayor Anthony Williams of Washington, D.C. Thereafter, I had a number of brief telephone conversations with an Associate White House Counsel to provide certain background information. In June 2001, I was provided with various forms to complete by the White House Counsel's office. In July 2001, I was informed by the White House that the FBI was going to conduct a background investigation of me. I was interviewed by a Special Agent of the FBI later that month and had a number of follow-up telephone conversations with that agent and his colleagues to provide them with further information. On September 4, 2001, I met with the Deputy White House Counsel to discuss the nomination process. On September 7, 2001, I met with Congresswoman Eleanor Holmes Norton. I was nominated by the President on September 10, 2001.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this “judicial activism” have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal judges, particularly at the trial court level, must exercise great self-restraint to avoid interfering with the constitutionally prescribed powers of the executive and legislative branches of our government. As a former congressional counsel and a former executive branch official, I am particularly sensitive to the rights and prerogatives of those two branches. Accordingly, I believe judges should place an extremely high priority on insuring both the justiciability of all matters that come before them, and the constitutionally permissible limitations on their powers to fashion remedies to resolve those controversies. Furthermore, I believe trial judges have to be especially mindful of their obligation to follow the precedents established by the U.S. Supreme Court and the Court of Appeals for their Circuit. To say the least, the doctrine of stare decisis is a cornerstone of our legal system, and must be closely adhered to by our trial judges.

AO-10  
Rev. 1/2001

**FINANCIAL DISCLOSURE REPORT  
FOR NOMINEES**

Report Required by the Ethics  
in Government Act of 1978,  
(5 U.S.C. App., §§101-111)

<b>1. Person Reporting</b> (Last name, first, middle initial)  Leon, Richard J.	<b>2. Court or Organization</b> U.S. District Court for the District of Columbia	<b>3. Date of Report</b>  9/18/01
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  District Judge, Nominee	<b>5. Report Type</b> (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>9/10/01</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	<b>6. Reporting Period</b>  1/1/00 - 9/18/01
<b>7. Chambers or Office Address</b> 1828 L Street, N.W. Washington, DC	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Washington Partner (3/99 - present)	Vorys, Sater, Seymour and Pease, LLP
2 Commissioner (3/00 - 1/01)	Judicial Review Commission on Foreign Asset Control
3 See Attached	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1		
2 2000	Vorys, Sater, Seymour and Pease, LLP	\$ 260,000
3 2000	Judicial Review Commission on Foreign Asset Control	\$ 52,609 ***
4 2000	Georgetown University	\$ 5,100
5 2000	IRA Distributions	\$ 53,300
	See Attached	\$

\*\*\* Amount Received Turned over to Vorys, Sater, Seymour and Pease, LLP

**ATTACHMENT TO FINANCIAL DISCLOSURE REPORT FOR JUDICIAL NOMINEE  
RICHARD J. LEON**

**I. POSITIONS**

<u>POSITION</u>	<u>NAME OF ORGANIZATION/PARTY</u>
Adjunct Professor (1977 – present)	Georgetown University Law Center
Member, (1991 – present)	Edward Bennett Williams Inn of Court
Member, (2000 – present)	Practitioners' Advisory Group, U.S. Sentencing Commission
Member, (1/00 – present)	Legal Advisory Board, Washington Legal Foundation
Member, 1996 – present)	National Practitioners Advisory Council, The Federalist Society
Member, (1991 – present)	The Judicial Conference of the District of Columbia Circuit
Member, (2001)	The Judicial Conference of the Fourth Circuit

**III. NON-INVESTMENT INCOME**

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>GROSS INCOME</u>
2000	John Hancock Life Insurance (demutualization payment)	\$ 1,156.00
2001 to date	Vorys, Sater, Seymour and Pease, LLP	\$190,000.00
2001	Judicial Review Commission on Foreign Asset Control	\$ 12,312.96**

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\*\* Amount Received Turned Over to Vorys, Sater, Seymour and Pease, LLP

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Richard J. Leon	9/18/01

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		
2	Exempt	
3		
4		
5		
6		
7		

**V. GIFTS.** *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1			\$
2	Exempt		\$
3			\$
4			\$

**VI. LIABILITIES.** *(Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2	MBNA	Credit Card	K
3	Riggs Bank	Line of Credit	J
4	Dept. of Justice Federal Credit Union	Line of Credit	J
5			
6			

\*Value Codes: K-\$15,000 or less; J-\$15,001-\$50,000; I-\$50,001-\$100,000; H-\$100,001-\$250,000; G-\$250,001-\$500,000; F-\$500,001-\$1,000,000; E-\$1,000,001-\$2,500,000; D-\$2,500,001-\$5,000,000; C-\$5,000,001-\$10,000,000; B-\$10,000,001-\$25,000,000; A-\$25,000,001-\$50,000,000; P-\$50,000,001 or more.



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Richard J. Leon	9/18/01

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

A Description of Assets (including trust assets)  <i>Place (1) after each asset except those from direct transfers.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Am. Code1 (A-H)	Type Code2 (I-J)	Value Code3 (L-P)	Value Method Code3 (Q-W)	Type Code4 (X-Y)	(2) Date Month Day	(3) Value Code2 (J-E)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets,									
1 Jan. 2000 to Dec. 2000 Fidelity 401(K) Mutual Fund Account		D Div.	M	T					
3 Dec. 2000 to present Fidelity 401(K) Individual Retirement Account (non invested)		C INT	M	T					
5 Riggs National Bank Stock Since 2001			J	T					
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1. Income/Unit Codes: A=\$1,000 or less (See Col. B1, D4); B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I=\$5,000,001-\$10,000,000; J=\$10,000,001-\$25,000,000; K=\$25,000,001-\$50,000,000; L=\$50,000,001-\$100,000,000; M=\$100,000,001-\$250,000,000; N=\$250,000,001-\$500,000,000; O=\$500,001-\$1,000,000; P=\$1,000,001-\$5,000,000; Q=\$5,000,001-\$10,000,000; R=\$10,000,001-\$25,000,000; S=\$25,000,001-\$50,000,000; T=\$50,000,001-\$100,000,000; U=\$100,000,001-\$250,000,000; V=\$250,000,001-\$500,000,000; W=\$500,001-\$1,000,000; X=\$1,000,001-\$5,000,000; Y=\$5,000,001-\$10,000,000; Z=\$10,000,001-\$25,000,000; AA=\$25,000,001-\$50,000,000; AB=\$50,000,001-\$100,000,000; AC=\$100,000,001-\$250,000,000; AD=\$250,000,001-\$500,000,000; AE=\$500,001-\$1,000,000; AF=\$1,000,001-\$5,000,000; AG=\$5,000,001-\$10,000,000; AH=\$10,000,001-\$25,000,000; AI=\$25,000,001-\$50,000,000; AJ=\$50,000,001-\$100,000,000; AK=\$100,000,001-\$250,000,000; AL=\$250,000,001-\$500,000,000; AM=\$500,001-\$1,000,000; AN=\$1,000,001-\$5,000,000; AO=\$5,000,001-\$10,000,000; AP=\$10,000,001-\$25,000,000; AQ=\$25,000,001-\$50,000,000; AR=\$50,000,001-\$100,000,000; AS=\$100,000,001-\$250,000,000; AT=\$250,000,001-\$500,000,000; AU=\$500,001-\$1,000,000; AV=\$1,000,001-\$5,000,000; AW=\$5,000,001-\$10,000,000; AX=\$10,000,001-\$25,000,000; AY=\$25,000,001-\$50,000,000; AZ=\$50,000,001-\$100,000,000; BA=\$100,000,001-\$250,000,000; BB=\$250,000,001-\$500,000,000; BC=\$500,001-\$1,000,000; BD=\$1,000,001-\$5,000,000; BE=\$5,000,001-\$10,000,000; BF=\$10,000,001-\$25,000,000; BG=\$25,000,001-\$50,000,000; BH=\$50,000,001-\$100,000,000; BI=\$100,000,001-\$250,000,000; BJ=\$250,000,001-\$500,000,000; BK=\$500,001-\$1,000,000; BL=\$1,000,001-\$5,000,000; BM=\$5,000,001-\$10,000,000; BN=\$10,000,001-\$25,000,000; BO=\$25,000,001-\$50,000,000; BP=\$50,000,001-\$100,000,000; BQ=\$100,000,001-\$250,000,000; BR=\$250,000,001-\$500,000,000; BS=\$500,001-\$1,000,000; BT=\$1,000,001-\$5,000,000; BU=\$5,000,001-\$10,000,000; BV=\$10,000,001-\$25,000,000; BW=\$25,000,001-\$50,000,000; BX=\$50,000,001-\$100,000,000; BY=\$100,000,001-\$250,000,000; BZ=\$250,000,001-\$500,000,000; CA=\$500,001-\$1,000,000; CB=\$1,000,001-\$5,000,000; CC=\$5,000,001-\$10,000,000; CD=\$10,000,001-\$25,000,000; CE=\$25,000,001-\$50,000,000; CF=\$50,000,001-\$100,000,000; CG=\$100,000,001-\$250,000,000; CH=\$250,000,001-\$500,000,000; CI=\$500,001-\$1,000,000; CJ=\$1,000,001-\$5,000,000; CK=\$5,000,001-\$10,000,000; CL=\$10,000,001-\$25,000,000; CM=\$25,000,001-\$50,000,000; CN=\$50,000,001-\$100,000,000; CO=\$100,000,001-\$250,000,000; CP=\$250,000,001-\$500,000,000; CQ=\$500,001-\$1,000,000; CR=\$1,000,001-\$5,000,000; CS=\$5,000,001-\$10,000,000; CT=\$10,000,001-\$25,000,000; CU=\$25,000,001-\$50,000,000; CV=\$50,000,001-\$100,000,000; CW=\$100,000,001-\$250,000,000; CX=\$250,000,001-\$500,000,000; CY=\$500,001-\$1,000,000; CZ=\$1,000,001-\$5,000,000; DA=\$5,000,001-\$10,000,000; DB=\$10,000,001-\$25,000,000; DC=\$25,000,001-\$50,000,000; DD=\$50,000,001-\$100,000,000; DE=\$100,000,001-\$250,000,000; DF=\$250,000,001-\$500,000,000; DG=\$500,001-\$1,000,000; DH=\$1,000,001-\$5,000,000; DI=\$5,000,001-\$10,000,000; DJ=\$10,000,001-\$25,000,000; DK=\$25,000,001-\$50,000,000; DL=\$50,000,001-\$100,000,000; DM=\$100,000,001-\$250,000,000; DN=\$250,000,001-\$500,000,000; DO=\$500,001-\$1,000,000; DP=\$1,000,001-\$5,000,000; DQ=\$5,000,001-\$10,000,000; DR=\$10,000,001-\$25,000,000; DS=\$25,000,001-\$50,000,000; DT=\$50,000,001-\$100,000,000; DU=\$100,000,001-\$250,000,000; DV=\$250,000,001-\$500,000,000; DW=\$500,001-\$1,000,000; DX=\$1,000,001-\$5,000,000; DY=\$5,000,001-\$10,000,000; DZ=\$10,000,001-\$25,000,000; EA=\$25,000,001-\$50,000,000; EB=\$50,000,001-\$100,000,000; EC=\$100,000,001-\$250,000,000; ED=\$250,000,001-\$500,000,000; EE=\$500,001-\$1,000,000; EF=\$1,000,001-\$5,000,000; EG=\$5,000,001-\$10,000,000; EH=\$10,000,001-\$25,000,000; EI=\$25,000,001-\$50,000,000; EJ=\$50,000,001-\$100,000,000; EK=\$100,000,001-\$250,000,000; EL=\$250,000,001-\$500,000,000; EM=\$500,001-\$1,000,000; EN=\$1,000,001-\$5,000,000; EO=\$5,000,001-\$10,000,000; EP=\$10,000,001-\$25,000,000; EQ=\$25,000,001-\$50,000,000; ER=\$50,000,001-\$100,000,000; ES=\$100,000,001-\$250,000,000; ET=\$250,000,001-\$500,000,000; EU=\$500,001-\$1,000,000; EV=\$1,000,001-\$5,000,000; EW=\$5,000,001-\$10,000,000; EX=\$10,000,001-\$25,000,000; EY=\$25,000,001-\$50,000,000; EZ=\$50,000,001-\$100,000,000; FA=\$100,000,001-\$250,000,000; FB=\$250,000,001-\$500,000,000; FC=\$500,001-\$1,000,000; FD=\$1,000,001-\$5,000,000; FE=\$5,000,001-\$10,000,000; FF=\$10,000,001-\$25,000,000; FG=\$25,000,001-\$50,000,000; FH=\$50,000,001-\$100,000,000; FI=\$100,000,001-\$250,000,000; FJ=\$250,000,001-\$500,000,000; FK=\$500,001-\$1,000,000; FL=\$1,000,001-\$5,000,000; FM=\$5,000,001-\$10,000,000; FN=\$10,000,001-\$25,000,000; FO=\$25,000,001-\$50,000,000; FP=\$50,000,001-\$100,000,000; FQ=\$100,000,001-\$250,000,000; FR=\$250,000,001-\$500,000,000; FS=\$500,001-\$1,000,000; FT=\$1,000,001-\$5,000,000; FU=\$5,000,001-\$10,000,000; FV=\$10,000,001-\$25,000,000; FW=\$25,000,001-\$50,000,000; FX=\$50,000,001-\$100,000,000; FY=\$100,000,001-\$250,000,000; FZ=\$250,000,001-\$500,000,000; GA=\$500,001-\$1,000,000; GB=\$1,000,001-\$5,000,000; GC=\$5,000,001-\$10,000,000; GD=\$10,000,001-\$25,000,000; GE=\$25,000,001-\$50,000,000; GF=\$50,000,001-\$100,000,000; GG=\$100,000,001-\$250,000,000; GH=\$250,000,001-\$500,000,000; GI=\$500,001-\$1,000,000; GJ=\$1,000,001-\$5,000,000; GK=\$5,000,001-\$10,000,000; GL=\$10,000,001-\$25,000,000; GM=\$25,000,001-\$50,000,000; GN=\$50,000,001-\$100,000,000; GO=\$100,000,001-\$250,000,000; GP=\$250,000,001-\$500,000,000; GQ=\$500,001-\$1,000,000; GR=\$1,000,001-\$5,000,000; GS=\$5,000,001-\$10,000,000; GT=\$10,000,001-\$25,000,000; GU=\$25,000,001-\$50,000,000; GV=\$50,000,001-\$100,000,000; GW=\$100,000,001-\$250,000,000; GX=\$250,000,001-\$500,000,000; GY=\$500,001-\$1,000,000; GZ=\$1,000,001-\$5,000,000; HA=\$5,000,001-\$10,000,000; HB=\$10,000,001-\$25,000,000; HC=\$25,000,001-\$50,000,000; HD=\$50,000,001-\$100,000,000; HE=\$100,000,001-\$250,000,000; HF=\$250,000,001-\$500,000,000; HG=\$500,001-\$1,000,000; HH=\$1,000,001-\$5,000,000; HI=\$5,000,001-\$10,000,000; HJ=\$10,000,001-\$25,000,000; HK=\$25,000,001-\$50,000,000; HL=\$50,000,001-\$100,000,000; HM=\$100,000,001-\$250,000,000; HN=\$250,000,001-\$500,000,000; HO=\$500,001-\$1,000,000; HP=\$1,000,001-\$5,000,000; HQ=\$5,000,001-\$10,000,000; HR=\$10,000,001-\$25,000,000; HS=\$25,000,001-\$50,000,000; HT=\$50,000,001-\$100,000,000; HU=\$100,000,001-\$250,000,000; HV=\$250,000,001-\$500,000,000; HW=\$500,001-\$1,000,000; HX=\$1,000,001-\$5,000,000; HY=\$5,000,001-\$10,000,000; HZ=\$10,000,001-\$25,000,000; IA=\$25,000,001-\$50,000,000; IB=\$50,000,001-\$100,000,000; IC=\$100,000,001-\$250,000,000; ID=\$250,000,001-\$500,000,000; IE=\$500,001-\$1,000,000; IF=\$1,000,001-\$5,000,000; IG=\$5,000,001-\$10,000,000; IH=\$10,000,001-\$25,000,000; II=\$25,000,001-\$50,000,000; IJ=\$50,000,001-\$100,000,000; IK=\$100,000,001-\$250,000,000; IL=\$250,000,001-\$500,000,000; IM=\$500,001-\$1,000,000; IN=\$1,000,001-\$5,000,000; IO=\$5,000,001-\$10,000,000; IP=\$10,000,001-\$25,000,000; IQ=\$25,000,001-\$50,000,000; IR=\$50,000,001-\$100,000,000; IS=\$100,000,001-\$250,000,000; IT=\$250,000,001-\$500,000,000; IU=\$500,001-\$1,000,000; IV=\$1,000,001-\$5,000,000; IW=\$5,000,001-\$10,000,000; IX=\$10,000,001-\$25,000,000; IY=\$25,000,001-\$50,000,000; IZ=\$50,000,001-\$100,000,000; JA=\$100,000,001-\$250,000,000; JB=\$250,000,001-\$500,000,000; JC=\$500,001-\$1,000,000; JD=\$1,000,001-\$5,000,000; JE=\$5,000,001-\$10,000,000; JF=\$10,000,001-\$25,000,000; JG=\$25,000,001-\$50,000,000; JH=\$50,000,001-\$100,000,000; JI=\$100,000,001-\$250,000,000; JJ=\$250,000,001-\$500,000,000; JK=\$500,001-\$1,000,000; JL=\$1,000,001-\$5,000,000; JM=\$5,000,001-\$10,000,000; JN=\$10,000,001-\$25,000,000; JO=\$25,000,001-\$50,000,000; JP=\$50,000,001-\$100,000,000; JQ=\$100,000,001-\$250,000,000; JR=\$250,000,001-\$500,000,000; JS=\$500,001-\$1,000,000; JT=\$1,000,001-\$5,000,000; JU=\$5,000,001-\$10,000,000; JV=\$10,000,001-\$25,000,000; JW=\$25,000,001-\$50,000,000; JX=\$50,000,001-\$100,000,000; JY=\$100,000,001-\$250,000,000; JZ=\$250,000,001-\$500,000,000; KA=\$500,001-\$1,000,000; KB=\$1,000,001-\$5,000,000; KC=\$5,000,001-\$10,000,000; KD=\$10,000,001-\$25,000,000; KE=\$25,000,001-\$50,000,000; KF=\$50,000,001-\$100,000,000; KG=\$100,000,001-\$250,000,000; KH=\$250,000,001-\$500,000,000; KI=\$500,001-\$1,000,000; KJ=\$1,000,001-\$5,000,000; KK=\$5,000,001-\$10,000,000; KL=\$10,000,001-\$25,000,000; KM=\$25,000,001-\$50,000,000; KN=\$50,000,001-\$100,000,000; KO=\$100,000,001-\$250,000,000; KP=\$250,000,001-\$500,000,000; KQ=\$500,001-\$1,000,000; KR=\$1,000,001-\$5,000,000; KS=\$5,000,001-\$10,000,000; KT=\$10,000,001-\$25,000,000; KU=\$25,000,001-\$50,000,000; KV=\$50,000,001-\$100,000,000; KW=\$100,000,001-\$250,000,000; KX=\$250,000,001-\$500,000,000; KY=\$500,001-\$1,000,000; KZ=\$1,000,001-\$5,000,000; LA=\$5,000,001-\$10,000,000; LB=\$10,000,001-\$25,000,000; LC=\$25,000,001-\$50,000,000; LD=\$50,000,001-\$100,000,000; LE=\$100,000,001-\$250,000,000; LF=\$250,000,001-\$500,000,000; LG=\$500,001-\$1,000,000; LH=\$1,000,001-\$5,000,000; LI=\$5,000,001-\$10,000,000; LJ=\$10,000,001-\$25,000,000; LK=\$25,000,001-\$50,000,000; LL=\$50,000,001-\$100,000,000; LM=\$100,000,001-\$250,000,000; LN=\$250,000,001-\$500,000,000; LO=\$500,001-\$1,000,000; LP=\$1,000,001-\$5,000,000; LQ=\$5,000,001-\$10,000,000; LR=\$10,000,001-\$25,000,000; LS=\$25,000,001-\$50,000,000; LT=\$50,000,001-\$100,000,000; LU=\$100,000,001-\$250,000,000; LV=\$250,000,001-\$500,000,000; LW=\$500,001-\$1,000,000; LX=\$1,000,001-\$5,000,000; LY=\$5,000,001-\$10,000,000; LZ=\$10,000,001-\$25,000,000; MA=\$25,000,001-\$50,000,000; MB=\$50,000,001-\$100,000,000; MC=\$100,000,001-\$250,000,000; MD=\$250,000,001-\$500,000,000; ME=\$500,001-\$1,000,000; MF=\$1,000,001-\$5,000,000; MG=\$5,000,001-\$10,000,000; MH=\$10,000,001-\$25,000,000; MI=\$25,000,001-\$50,000,000; MJ=\$50,000,001-\$100,000,000; MK=\$100,000,001-\$250,000,000; ML=\$250,000,001-\$500,000,000; MN=\$500,001-\$1,000,000; MO=\$1,000,001-\$5,000,000; MP=\$5,000,001-\$10,000,000; MQ=\$10,000,001-\$25,000,000; MR=\$25,000,001-\$50,000,000; MS=\$50,000,001-\$100,000,000; MT=\$100,000,001-\$250,000,000; MU=\$250,000,001-\$500,000,000; MV=\$500,001-\$1,000,000; MW=\$1,000,001-\$5,000,000; MX=\$5,000,001-\$10,000,000; MY=\$10,000,001-\$25,000,000; MZ=\$25,000,001-\$50,000,000; NA=\$50,000,001-\$100,000,000; NB=\$100,000,001-\$250,000,000; NC=\$250,000,001-\$500,000,000; ND=\$500,001-\$1,000,000; NE=\$1,000,001-\$5,000,000; NF=\$5,000,001-\$10,000,000; NG=\$10,000,001-\$25,000,000; NH=\$25,000,001-\$50,000,000; NI=\$50,000,001-\$100,000,000; NJ=\$100,000,001-\$250,000,000; NK=\$250,000,001-\$500,000,000; NL=\$500,001-\$1,000,000; NM=\$1,000,001-\$5,000,000; NO=\$5,000,001-\$10,000,000; NP=\$10,000,001-\$25,000,000; NQ=\$25,000,001-\$50,000,000; NR=\$50,000,001-\$100,000,000; NS=\$100,000,001-\$250,000,000; NT=\$250,000,001-\$500,000,000; NU=\$500,001-\$1,000,000; NV=\$1,000,001-\$5,000,000; NW=\$5,000,001-\$10,000,000; NX=\$10,000,001-\$25,000,000; NY=\$25,000,001-\$50,000,000; NZ=\$50,000,001-\$100,000,000; OA=\$100,000,001-\$250,000,000; OB=\$250,000,001-\$500,000,000; OC=\$500,001-\$1,000,000; OD=\$1,000,001-\$5,000,000; OE=\$5,000,001-\$10,000,000; OF=\$10,000,001-\$25,000,000; OG=\$25,000,001-\$50,000,000; OH=\$50,000,001-\$100,000,000; OI=\$100,000,001-\$250,000,000; OJ=\$250,000,001-\$500,000,000; OK=\$500,001-\$1,000,000; OL=\$1,000,001-\$5,000,000; OM=\$5,000,001-\$10,000,000; ON=\$10,000,001-\$25,000,000; OO=\$25,000,001-\$50,000,000; OP=\$50,000,001-\$100,000,000; OQ=\$100,000,001-\$250,000,000; OR=\$250,000,001-\$500,000,000; OS=\$500,001-\$1,000,000; OT=\$1,000,001-\$5,000,000; OU=\$5,000,001-\$10,000,000; OV=\$10,000,001-\$25,000,000; OW=\$25,000,001-\$50,000,000; OX=\$50,000,001-\$100,000,000; OY=\$100,000,001-\$250,000,000; OZ=\$250,000,001-\$500,000,000; PA=\$500,001-\$1,000,000; PB=\$1,000,001-\$5,000,000; PC=\$5,000,001-\$10,000,000; PD=\$10,000,001-\$25,000,000; PE=\$25,000,001-\$50,000,000; PF=\$50,000,001-\$100,000,000; PG=\$100,000,001-\$250,000,000; PH=\$250,000,001-\$500,000,000; PI=\$500,001-\$1,000,000; PJ=\$1,000,001-\$5,000,000; PK=\$5,000,001-\$10,000,000; PL=\$10,000,001-\$25,000,000; PM=\$25,000,001-\$50,000,000; PN=\$50,000,001-\$100,000,000; PO=\$100,000,001-\$250,000,000; PP=\$250,000,001-\$500,000,000; PQ=\$500,001-\$1,000,000; PR=\$1,000,001-\$5,000,000; PS=\$5,000,001-\$10,000,000; PT=\$10,000,001-\$25,000,000; PU=\$25,000,001-\$50,000,000; PV=\$50,000,001-\$100,000,000; PW=\$100,000,001-\$250,000,000; PX=\$250,000,001-\$500,000,000; PY=\$500,001-\$1,000,000; PZ=\$1,000,001-\$5,000,000; QA=\$5,000,001-\$10,000,000; QB=\$10,000,001-\$25,000,000; QC=\$25,000,001-\$50,000,000; QD=\$50,000,001-\$100,000,000; QE=\$100,000,001-\$250,000,000; QF=\$250,000,001-\$500,000,000; QG=\$500,001-\$1,000,000; QH=\$1,000,001-\$5,000,000; QI=\$5,000,001-\$10,000,000; QJ=\$10,000,001-\$25,000,000; QK=\$25,000,001-\$50,000,000; QL=\$50,000,001-\$100,000,000; QM=\$100,000,001-\$250,000,000; QN=\$250,000,001-\$500,000,000; QO=\$500,001-\$1,000,000; QQ=\$1,000,001-\$5,000,000; QR
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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Richard J. Leon	9/18/01

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

A Description of Assets (including trust assets)  <i>Place "01" after each asset except from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Type Code 1 (A-H)	Type (div- rent or inf.)	Value Code 2 (I-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date Month/ Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
18									
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									
35									

**1. Income/Gain Codes:** A-\$1,000 or less; B-\$1,001-\$2,500; C-\$2,501-\$5,000; D-\$5,001-\$15,000; E-\$15,001-\$50,000;  
 (See Col. B1, D4) F-\$50,001-\$100,000; G-\$100,001-\$1,000,000; H-\$1,000,001-\$5,000,000; I-\$5,000,001-\$25,000,000;  
 J-More than \$25,000,000  
**2. Value Codes:** 1-\$15,000 or less; 2-\$15,001-\$50,000; 3-\$50,001-\$100,000; 4-\$100,001-\$500,000; 5-\$500,001-\$1,000,000;  
 (See Col. C1, D3) 6-\$1,000,001-\$5,000,000; 7-\$5,000,001-\$25,000,000; 8-More than \$25,000,000  
**3. Value Method Codes:** Q-Appraisal; R-Cost (real estate only); S-Assessment; T-Cash/Market  
 (See Col. C4) U-Book Value; V-Other; W-Estimated

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Richard J. Leon	9/18/01

**VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Description of Assets (including trust assets)  <i>Place (D) after each asset exempt from prior disclosure</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asset Code (A-H)	Type (e.g., div., rent or int.)	Value Code (T-O)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(1) Date Month/Day	(2) Value Code (J-P)	(3) Gain Code (A-H)	(4) Identify as "separate" (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									
52									
53									

1. Income Gain Codes: A=\$1,000 or less (See Col. B1, D4)	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000
2. Value Codes: J=\$15,000 or less (See Col. C1, D3)	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000
	O=\$500,001-\$1,000,000	P=\$1,000,001-\$5,000,000	Q=\$5,000,001-\$25,000,000	R=\$25,000,001-\$50,000,000
3. Value Method Codes: Q=Appraised (See Col. C2)	R=Cost (real estate only)	S=Assessed	T=Cash/Market	U=Book Value
	V=Other	W=Estimated		

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting \_\_\_\_\_

Date of Report

Richard J. Leon

9/18/01

**VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting periods
	(1) (2)	(1) (2)	(1) If not exempt from disclosure: (2) Date Month Day (3) Value Code 2 (I-F) (4) Gain Code 1 (A-H) (5) Interval days (rel. if private transaction)
Please enter "NONE" after tax basis excludes prior price disclosure.	Type (C.S.) dis- tent or int)	Value Code 2 (J-T)	Type (e.g., buy, sell, transfer, redemption)
NONE (No reportable income, assets, or transactions)			
54			
55			
56			
57			
58			
59			
60			
61			
62			
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64			
65			
66			
67			
68			
69			
70			

1	Income Tax Codes	A-\$1,000 or more B-\$1,000-\$1,100,000 C-\$1,100,001-\$1,200,000 D-\$1,200,001-\$1,300,000 E-\$1,300,001-\$1,400,000 F-\$1,400,001-\$1,500,000 G-\$1,500,001-\$1,600,000 H-\$1,600,001-\$1,700,000 I-\$1,700,001-\$1,800,000 J-\$1,800,001-\$1,900,000 K-\$1,900,001-\$2,000,000 L-\$2,000,001-\$2,100,000 M-\$2,100,001-\$2,200,000 N-\$2,200,001-\$2,300,000 O-\$2,300,001-\$2,400,000 P-\$2,400,001-\$2,500,000 Q-\$2,500,001-\$2,600,000 R-\$2,600,001-\$2,700,000 S-\$2,700,001-\$2,800,000 T-\$2,800,001-\$2,900,000 U-\$2,900,001-\$3,000,000 V-\$3,000,001-\$3,100,000 W-\$3,100,001-\$3,200,000 X-\$3,200,001-\$3,300,000 Y-\$3,300,001-\$3,400,000 Z-\$3,400,001-\$3,500,000 AA-\$3,500,001-\$3,600,000 AB-\$3,600,001-\$3,700,000 AC-\$3,700,001-\$3,800,000 AD-\$3,800,001-\$3,900,000 AE-\$3,900,001-\$4,000,000 AF-\$4,000,001-\$4,100,000 AG-\$4,100,001-\$4,200,000 AH-\$4,200,001-\$4,300,000 AI-\$4,300,001-\$4,400,000 AJ-\$4,400,001-\$4,500,000 AK-\$4,500,001-\$4,600,000 AL-\$4,600,001-\$4,700,000 AM-\$4,700,001-\$4,800,000 AN-\$4,800,001-\$4,900,000 AO-\$4,900,001-\$5,000,000 AP-\$5,000,001-\$5,100,000 AQ-\$5,100,001-\$5,200,000 AR-\$5,200,001-\$5,300,000 AS-\$5,300,001-\$5,400,000 AT-\$5,400,001-\$5,500,000 AU-\$5,500,001-\$5,600,000 AV-\$5,600,001-\$5,700,000 AW-\$5,700,001-\$5,800,000 AX-\$5,800,001-\$5,900,000 AY-\$5,900,001-\$6,000,000 AZ-\$6,000,001-\$6,100,000 BA-\$6,100,001-\$6,200,000 BB-\$6,200,001-\$6,300,000 BC-\$6,300,001-\$6,400,000 BD-\$6,400,001-\$6,500,000 BE-\$6,500,001-\$6,600,000 BF-\$6,600,001-\$6,700,000 BG-\$6,700,001-\$6,800,000 BH-\$6,800,001-\$6,900,000 BI-\$6,900,001-\$7,000,000 BJ-\$7,000,001-\$7,100,000 BK-\$7,100,001-\$7,200,000 BL-\$7,200,001-\$7,300,000 BM-\$7,300,001-\$7,400,000 BN-\$7,400,001-\$7,500,000 BO-\$7,500,001-\$7,600,000 BP-\$7,600,001-\$7,700,000 BQ-\$7,700,001-\$7,800,000 BR-\$7,800,001-\$7,900,000 BS-\$7,900,001-\$8,000,000 BT-\$8,000,001-\$8,100,000 BU-\$8,100,001-\$8,200,000 BV-\$8,200,001-\$8,300,000 BW-\$8,300,001-\$8,400,000 BX-\$8,400,001-\$8,500,000 BY-\$8,500,001-\$8,600,000 BZ-\$8,600,001-\$8,700,000 CA-\$8,700,001-\$8,800,000 CB-\$8,800,001-\$8,900,000 CC-\$8,900,001-\$9,000,000 CD-\$9,000,001-\$9,100,000 CE-\$9,100,001-\$9,200,000 CF-\$9,200,001-\$9,300,000 CG-\$9,300,001-\$9,400,000 CH-\$9,400,001-\$9,500,000 CI-\$9,500,001-\$9,600,000 CJ-\$9,600,001-\$9,700,000 CK-\$9,700,001-\$9,800,000 CL-\$9,800,001-\$9,900,000 CM-\$9,900,001-\$10,000,000 CN-\$10,000,001-\$10,100,000 CO-\$10,100,001-\$10,200,000 CP-\$10,200,001-\$10,300,000 CQ-\$10,300,001-\$10,400,000 CR-\$10,400,001-\$10,500,000 CS-\$10,500,001-\$10,600,000 CT-\$10,600,001-\$10,700,000 CU-\$10,700,001-\$10,800,000 CV-\$10,800,001-\$10,900,000 CW-\$10,900,001-\$11,000,000 CX-\$11,000,001-\$11,100,000 CY-\$11,100,001-\$11,200,000 CZ-\$11,200,001-\$11,300,000 CA-\$11,300,001-\$11,400,000 CB-\$11,400,001-\$11,500,000 CC-\$11,500,001-\$11,600,000 CD-\$11,600,001-\$11,700,000 CE-\$11,700,001-\$11,800,000 CF-\$11,800,001-\$11,900,000 CG-\$11,900,001-\$12,000,000 CH-\$12,000,001-\$12,100,000 CI-\$12,100,001-\$12,200,000 CJ-\$12,200,001-\$12,300,000 CK-\$12,300,001-\$12,400,000 CL-\$12,400,001-\$12,500,000 CM-\$12,500,001-\$12,600,000 CN-\$12,600,001-\$12,700,000 CO-\$12,700,001-\$12,800,000 CP-\$12,800,001-\$12,900,000 CQ-\$12,900,001-\$13,000,000 CR-\$13,000,001-\$13,100,000 CS-\$13,100,001-\$13,200,000 CT-\$13,200,001-\$13,300,000 CU-\$13,300,001-\$13,400,000 CV-\$13,400,001-\$13,500,000 CW-\$13,500,001-\$13,600,000 CX-\$13,600,001-\$13,700,000 CY-\$13,700,001-\$13,800,000 CZ-\$13,800,001-\$13,900,000 CA-\$13,900,001-\$14,000,000 CB-\$14,000,001-\$14,100,000 CC-\$14,100,001-\$14,200,000 CD-\$14,200,001-\$14,300,000 CE-\$14,300,001-\$14,400,000 CF-\$14,400,001-\$14,500,000 CG-\$14,500,001-\$14,600,000 CH-\$14,600,001-\$14,700,000 CI-\$14,700,001-\$14,800,000 CJ-\$14,800,001-\$14,900,000 CK-\$14,900,001-\$15,000,000 CL-\$15,000,001-\$15,100,000 CM-\$15,100,001-\$15,200,000 CN-\$15,200,001-\$15,300,000 CO-\$15,300,001-\$15,400,000 CP-\$15,400,001-\$15,500,000 CQ-\$15,500,001-\$15,600,000 CR-\$15,600,001-\$15,700,000 CS-\$15,700,001-\$15,800,000 CT-\$15,800,001-\$15,900,000 CU-\$15,900,001-\$16,000,000 CV-\$16,000,001-\$16,100,000 CW-\$16,100,001-\$16,200,000 CX-\$16,200,001-\$16,300,000 CY-\$16,300,001-\$16,400,000 CZ-\$16,400,001-\$16,500,000 CA-\$16,500,001-\$16,600,000 CB-\$16,600,001-\$16,700,000 CC-\$16,700,001-\$16,800,000 CD-\$16,800,001-\$16,900,000 CE-\$16,900,001-\$17,000,000 CF-\$17,000,001-\$17,100,000 CG-\$17,100,001-\$17,200,000 CH-\$17,200,001-\$17,300,000 CI-\$17,300,001-\$17,400,000 CJ-\$17,400,001-\$17,500,000 CK-\$17,500,001-\$17,600,000 CL-\$17,600,001-\$17,700,000 CM-\$17,700,001-\$17,800,000 CN-\$17,800,001-\$17,900,000 CO-\$17,
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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Richard J. Leon	9/18/01

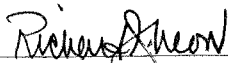
## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

9/18/01

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

## FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Suite 2301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Senator CANTWELL. Thank you.  
Mr. Zainey.

**STATEMENT OF JAY ZAINY, OF LOUISIANA, NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Mr. ZAINY. Madam Chair, again I would like to also extend to you my deep appreciation for having this meeting today, along with Senator Grassley and Senator Kyl for being here.

Obviously, this has been the most important thing in, I am sure, everyone at this table's lives. And I know that you all have many, many, many other things going on in your lives, but for you all to share this day with us, we greatly appreciate.

I would also like to thank the members of your staffs. The Senate staff members have been very, very patient with myself and I am sure with my colleagues. And to all of you that I have discussed things with, I greatly appreciate what you have done.

I am very honored to have with me today a number of people from the New Orleans area, especially my wife, Joy; my daughter, Margaret. Margaret is working now in Birmingham, Alabama, as a freelance writer. Margaret had the honor of serving as an intern a couple summers ago for Senator Breaux for one month. But, again, because of the bipartisanship that we have discussed, Senator Breaux being a Democrat, she also served for a month as an intern with Congressman Billy Tauzin, Republican from Louisiana. Margaret loved her experience and she wanted to come here to visit with her old friends, and I am glad she took time out from her busy schedule to be with me for this next hour-and-a-half or so.

I am also very fortunate to have, but not with me today, two beautiful sons. Christopher, who is 19, is a freshman at the University of Mississippi, Ole Miss, and he swears to me that he is studying this week because otherwise he would have loved to have been here. And my angel, Andrew. Andrew is our special ed student back home and I know that Andrew's thoughts are with us today.

I am also very blessed to have with me four very close friends that have—three of whom have traveled with me from New Orleans to be here today and one of whom is working here with the Committee on Aging.

Guy Leaf is in the audience. Guy is from New Orleans and he has been working in Washington for the past number of months on the Committee on Aging. He has been doing a wonderful job and I am very grateful that Guy is here with us today.

Also, my three musketeer friends from back home, John Litchfield, Jim Barkate, and Kevin Heigle, are also with me today, and I thank them for their support.

Thank you.

[The biographical information of Mr. Zainey follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Jay Christopher Zainey
2. Address: List current place of residence and office address(es).  
  
Residence: Metairie, LA  
  
Office: 2310 Metairie Road  
Metairie, LA 70001
3. Date and place of birth.  
  
July 7, 1951 -  
New Orleans, Louisiana
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married: Wife: Joy Haik Zainey  
Housewife - former school teacher and mother of three children
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Louisiana State University  
School of Law  
1972 - 1975  
Juris Doctor Degree December 19, 1975  
  
University of New Orleans  
(Formerly: LSU in New Orleans)  
1969 - 1972  
Bachelor of Science; August 1973  
Business Administration - Law
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Jay C. Zainey  
Professional Law Corporation  
1984 (approximate) - present

Law association with James McPherson, Peter J. Abadie, Jr., Dennis Weber, and Eugene Booth.  
1976-1984 (approximate)

Law Offices of George & George, Ltd.  
1974-1975  
Student law clerk

Jefferson Parish District Attorney's Office  
1973 (Summer), 1974 (Summer), 1975 (Summer)  
Student law clerk

State of Louisiana  
Louisiana Constitutional Convention  
1973-1974  
Student law clerk

Winn-Dixie Super Market  
1966-1974  
Stock clerk/cashier/bag boy

British Cedars, Ltd.  
1984 - 1998 (approximate)  
President - Treasurer

Razoo Stables, Inc.  
1999 - 2001

Ridgehouse Properties  
1986 - 1998

Parish of Jefferson  
Traffic Hearing Officer/Judge Ad Hoc  
1981 - present

Advocacy Center for the Disabled and Elderly (non-profit)  
Board Member 2001

Jefferson Performing Art Society  
Board Member, early 1990s



Jesuit High School Parents' Club  
President 1997

Jesuit High School President's Advisory Board  
Board Member 1997

Stuart Hall School President's Advisory Board  
Board Member - early 1990s

The Extra Mile, Jefferson Parish Human Services Authority, Inc.  
Board Chairman 1993-1994

President's Committee on Mental Retardation Task Force  
early 1990s

St. Catherine of Siena Church Parish Council  
President - 1992

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

United States Air Force Reserves  
1970 - 1976  
Staff Sergeant, 433-72-4653  
Honorable Discharge

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Fellow, Louisiana Bar Foundation

Louisiana State Bar Association Community Action Committee Recognition Award  
"For Everything he has done and Continues to do for those In need in our communities throughout Louisiana".

Legal Services Project Director's Award  
"For His Dedication to the Provision of Civil Legal Services to Disadvantaged Louisianians".

Jefferson Bar Association Auxiliary Law Day Award  
"For Outstanding Service and Accomplishment in the Legal Profession".

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Louisiana State Bar Association  
 President (1995 - 1996)  
 President-elect (1994 - 1995)  
 Member, Board of Governors (1989 - 1991 and 1994-1997 )  
 Member, House of Delegates (1981-1989)  
 Member, Nominating Committee  
 Texas Bar Association  
 National Conference of Bar Presidents  
 Executive Council Member (1998 - 2000)  
 American Bar Association  
 Past Member, House of Delegates (1994 - 1995)  
 Southern Conference of Bar Presidents  
 Federal Bar Association  
 Jefferson Bar Association  
 President (1990 - 1991)  
 Louisiana Supreme Court Committee on Judicial Ethics  
 Louisiana Supreme Court Committee to Study Cameras in the Courtroom  
 St. Thomas More Catholic Lawyers Association  
 Second Vice President  
 Member, Louisiana Lawyers for Life  
 Chairman, Victims of Crime Compensation Committee  
 Louisiana State Bar Association  
 Chairman, Section of Negligence, Workman's Compensation and Insurance Law  
 Louisiana State Bar Association  
 Member, Bar Governance Committee,  
 Louisiana State Bar Association  
 Member, Community Action Committee,  
 Louisiana State Bar Association  
 Member, Long Range Planning Committee,  
 Louisiana State Bar Association  
 Member, Committee to Provide Legal Services for the Disabled,  
 Louisiana State Bar Association  
 Member, Federalist Society  
 Member, National Lawyers Association  
 Fellow, Louisiana Bar Foundation  
 Ex-officio Member (past), Louisiana Law Institute  
 Ex-officio Member (past), American Law Institute  
 Ex-officio Member (past), Louisiana Judicial College  
 Young Lawyers Section, Disaster Relief Task Force Member

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong

To my knowledge, the Autism Society is active in lobbying before public bodies

Other Organizations

Jefferson Chamber of Commerce, Member  
 Old Metairie Road Business Association, Member  
 Mardi Gras Krewe of Hermes  
 Metairie Country Club  
 Syrian-Lebanese American Club  
 Advocacy Center for the Disabled and Elderly, Board Member

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court (August 1981)  
 United States District Court, Eastern District of Louisiana (April 1976)  
 United States District Court, Middle District of Louisiana (August 1976)  
 United States District Court, Western District of Louisiana (September 1977)  
 United States Fifth Circuit Court of Appeals (October 1981)  
 All Louisiana State and Local Courts (April 1976)  
 All Texas State and Local Courts (May 1998)  
 None of my memberships have ever lapsed.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Publications:

"One on One with Jay Zainey"  
 Louisiana Bar Journal, Vol. 43, No. 1  
  
 "Restoring Dignity to the Profession"  
 President's Message, Louisiana Bar Journal, Vol. 43, No. 2  
  
 "The Rumors are True"  
 President's Message, Louisiana Bar Journal, Vol. 43, No. 3

"Do Lawyers Really Make a Difference?"  
President's Message, Louisiana Bar Journal, Vol. 43, No. 4

"Legal Profession Takes a Positive Step"  
President's Message, Louisiana Bar Journal, Vol. 43, No. 5

"This Has Been a Great Year . . . Thanks to You"  
President's Message, Louisiana Bar Journal, Vol. 43, No. 6

"On the Road with Jay C. Zainey"  
Louisiana Bar Journal, Vol. 44, No. 4

Speeches:

Bar Admissions Ceremony (April 19, 1996)  
Association of Women Attorneys Meeting (January 19, 1995)

Newspaper articles:

Attached are copies of numerous newspaper articles appearing throughout the State of Louisiana after the Louisiana State Bar Association House of Delegates, presided over by Jay C. Zainey, President, unanimously voted to amend the Rules for Professional Conduct to provide for a thirty day ban on targeted mail solicitation after an accident or disaster, consistent with a ruling by the U.S. Supreme Court.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Last physical examination was on July 27, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

- a. Traffic Hearing Officer - appointed - various terms from 1981 through the present. Jurisdiction - traffic violations in the East Bank of Jefferson Parish.
- b. Judge Ad Hoc - First Parish Court - appointed - various terms from 1981 through 1994 (approximate). Civil jurisdiction up to \$20,000.00 limit; misdemeanor, and more serious traffic offenses occurring on the East Bank of Jefferson Parish.
- c. Judge Ad Hoc - Jefferson Parish Juvenile Court - appointed - various terms during approximately 1996 through 1997 - jurisdiction over juvenile matters in Jefferson Parish.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

No opinions were written. None of my decisions were reversed to my knowledge. No significant federal or state constitutional issues were addressed.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have never served as a law clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I incorporated Jay C. Zainey, Professional Law Corporation on September 2, 1986, in which I was a solo practitioner. Since approximately 1995, I have had, at various times, a total of four (4) attorneys serve as "of counsel" with my firm. They are: Glenda M. Barkate  
Ashley Belleau  
Susan H. Shuey  
Anthony J. Angelette

My firm address from approximately 1984 to 1998 was:  
2543 Metairie Road, Metairie, LA 70001

Since October 1998, my firm address has been:  
2310 Metairie Road, Metairie, LA 70001

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Jay C. Zainey  
Professional Law Corporation  
August 1984 (approximate) - Present

Law association with James McPherson, Peter J. Abadie, Jr., Dennis Weber, and Eugene Booth.  
1976-1984 (approximate)  
419 Carondelet Street  
New Orleans, LA

I have also served as "of counsel" with the law firm of Berrigan, Litchfield, Schoenkas and Mann from approximately 1996 through 2000.  
400 Poydras Street  
Texaco Center Suite 2000  
New Orleans, Louisiana 70130-2000

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General civil and criminal litigation practice which includes representing the interests of various individuals, corporations, and governmental entities in Federal, State and Administrative Courts.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Mostly individuals. I have not specialized in any particular field.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
  - (a) federal courts;  
20%
  - (b) state courts of record;  
75%
  - (c) other courts.  
5%
  
3. What percentage of your litigation was:
  - (a) civil;  
75%
  - (b) criminal.  
25%
  
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 

Sole counsel - 115 (approximate)  
 Lead counsel - 2 (approximate)  
 Associate counsel - 10 (approximate)
  
5. What percentage of these trials was:
  - (a) jury;  
20-25%
  - (b) non-jury.  
75-80%
  
18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
  - (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I. Allen Boudreaux vs. James "Jim" Brown  
24<sup>th</sup> Judicial District Court No. 546-342, Division "G"

I represented the defendant in this election case against whom the plaintiff obtained a temporary restraining order prohibiting the defendant from airing certain television commercials.

The trial court, in reversing itself and rescinding the temporary restraining order, found the defendant's television commercials protected by the First Amendment.

This dealt with an important Constitutional issue.

As a result of the temporary restraining order, my client was prohibited from speaking about an issue, based merely on a written allegation by the plaintiff that the statement was false.

The Court correctly reversed itself in favor of upholding my client's right of free speech.

- (a) November 12, 1999
- (b) Judge Ronald Bodenheimer, 24<sup>th</sup> Judicial District Court, Division "N",  
(504)364-3941
- (c) Counsel for plaintiff: Robert Evans, Jr.  
3632 Canal Street  
New Orleans, LA 70119-6135  
(504) 488-3726

II. State of Louisiana vs. Meredith Vosjtaskovic  
Criminal District Court No. 370-285, Section: J

In this criminal case, I represented the defendant who was charged with vehicular homicide.

The defendant, a college student, was intoxicated and, while driving, fatally injured a very popular United States Magistrate Judge. The defendant had no prior criminal record at all.

Although it was a very difficult case for me to handle, the defendant had a right to legal counsel, and I felt obligated to represent her, based on the oath I took as an attorney that attorneys are required to represent unpopular clients to the best of our ability.

After the defendant's motion to suppress the admissibility of the breathalyzer test was denied, the defendant plead guilty to the charge.



My argument at her sentencing hearing was that the status of the victim should have no bearing on the sentence.

- (a) 1994
- (b) Judge Leon Cannizzaro  
Criminal District Court, Section J  
(504)827-3458
- (c) New Orleans District Attorney's Office  
619 So. White Street  
New Orleans, LA 70119  
(504) 822-2414

III. Gerald Rogers, et al vs. General Motors and B.F. Goodrich, Inc.  
United States District Court, Eastern District of Louisiana, Section D  
No. 89-CV-3188

This was a personal injury case in which co-counsel and I represented the plaintiffs.

Mr. Rogers, a member of the Army National Guard, was paralyzed after his military vehicle flipped over as a result of a tire tread separation.

The case was settled for a significant sum of money. The terms of the settlement were sealed by the Court.

This litigation involved extensive discovery which generated a substantial number of documents, and it involved numerous expert witnesses.

- (a) 1988-1991
- (b) Honorable A. J. McNamara, Section D  
United States District Court, Eastern District of Louisiana
- (c) Paul V. Cassisa, Sr. - General Motors  
1615 Metairie Road  
Metairie, LA 70005  
(504-834-2612)

John J. Weigel - B.F. Goodrich, Inc.  
201 St. Charles Avenue  
New Orleans, LA 70130  
(504)582-8128

- (d) Co-counsel: E. John Litchfield  
400 Poydras Street

Texaco Center Suite 2000  
New Orleans, Louisiana 70130-2000  
Telephone: (504)568-0541

- (e) Mr. Litchfield and I shared responsibilities in this case. We took numerous depositions, we both prepared pleadings, and we both negotiated settlement with opposing counsel.

IV. United States of America vs. Mary Cunningham  
United States District Court, Eastern District of Louisiana, Section B  
No. 87-CR-119

In this criminal case in the United States District Court for the Eastern District of Louisiana, I was appointed by the Court/Federal Public Defender's Office to represent the defendant on a charge of manufacturing drugs.

A co-conspirator testified for the Government against the defendant.

I was able to completely discredit the co-conspirator, and the defendant was acquitted.

- (a) 1987
- (b) Honorable Adrian Duplantier, Section B  
United States District Court, Eastern District of Louisiana
- (c) Assistant United States Attorneys: William McSherry  
Larry Benson  
500 Camp Street  
New Orleans, LA 70130  
(504) 680-3000

V. In re: D.P.  
Orleans Parish Juvenile Court, No. 97-328-15 T, Section C and Section A

I represented, pro bono, a young girl who was a ward of the State, and who was in foster care. She had been taken away from her drug addicted mother, and her father was unknown.

She had extensive psychiatric and behavioral problems.

After at least five court appearances over the period of a year, the child was successfully adopted by well qualified adoptive parents.

- (a) 1999-2000
- (b) Judge Salvador Mule, Section C  
Judge Ernestine Gray, Section A  
Orleans Parish Juvenile Court

- (c) Orleans Parish District Attorney's Office  
421 Loyola Avenue  
New Orleans, LA 70130  
(504) 565-7300

- VI. State of Louisiana vs. Patrick Murphy  
24<sup>th</sup> Judicial District Court, Division M  
No. 84-1477 and 84-1505

I represented a deputy sheriff who was charged with aggravated rape. His defense was that the victim consented.

If convicted, he would face a mandatory life sentence.

After a two (2) day jury trial, he was acquitted.

Although he no longer works as a deputy sheriff, he has returned to a productive life.

- (a) 1984
- (b) Judge Robert Burns  
24<sup>th</sup> Judicial District Court, Division M
- (c) Jefferson Parish Assistant District Attorney (now Judge) Robert Pitre  
Jefferson Parish Courthouse, Division G  
200 Derbigny Street  
Gretna, LA 70053  
(504)364-3865-

- VII. State of Louisiana vs. James "Skeeter" Stulb  
24<sup>th</sup> Judicial District Court, First Parish Court

I represented the defendant, a man who suffered from brain damage.

He was riding a bicycle and accidentally struck the side of a parked car.

A man ran out of the house screaming and threatening the defendant.

The defendant, afraid, fled.

The man caught up with the defendant and beat him.

The defendant was charged with battery, criminal damage to property, and trespassing.

Charges were subsequently refused by the District Attorney's Office.

The defendant recently was called to testify against his assailant in an unrelated criminal charge against his assailant.

- (a) 2000-2001
- (b) The charges were refused by the Jefferson Parish District Attorney's Office
- (c) Assistant District Attorney Ken Wolfe  
Jefferson Parish Courthouse  
Gretna, LA 70053  
(504)368-1020

VIII. Succession of Leslie Henry, Sr.  
24<sup>th</sup> Judicial District Court, Division A  
No. 343-025

I represented a gentleman who was disinherited by his father because of his "failure to communicate" with him.

In truth and in fact, and as found by the Court, my client returned from the war and was not allowed to speak to his father by his stepmother. His father did not know this at the time he wrote his will - nor at the time of his death.

- (a) 1987
- (b) Judge G. Thomas Porteous  
24<sup>th</sup> Judicial District Court, Division A  
(Now a United States District Court Judge for the Eastern District of Louisiana)
- (c) Mark Nolting  
300 Huey P. Long Avenue  
Gretna, LA 70053  
(504)368-2062

IX. In re: Judiciary Commission  
Docket numbers 0126, 0127, & 0128

I represented a State District Court Judge who was charged in three counts with violation of the Judicial Canon of Ethics.

He was formally found by the Judiciary Commission of Louisiana to have not violated the Judicial Canon of Ethics.

- (a) 2001
- (b) Judiciary Commission for the State of Louisiana
- (c) Steve Scheckman, Special Counsel  
601 St. Charles Avenue  
New Orleans, LA 70130

(504)568-8299

- X. Donald Anderson vs. State of Louisiana  
United States District Court, Division A  
Civil Action No. 97-3225

I defended the State of Louisiana and a member of the Crescent City Connection Police Department in this civil rights action.

The police officer shot the plaintiff, causing permanent disability.

The plaintiff subsequently pled guilty to attempted murder of the officer.

We alleged that the plaintiff was driving his car in reverse and was attempting to run over the officer at the time he shot the plaintiff.

The case settled for nuisance value.

- (a) 1998
- (b) The Honorable Charles Schwartz  
United States District Judge; Division A
- (c) Keith Couture  
1615 East Judge Perez Drive  
Chalmette, LA 70043  
(504)279-8555

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

- 1. I represented a quadriplegic, pro bono, whose motorized wheelchair constantly malfunctioned. After much discussion, and after threatened litigation, the company agreed to replace my client's wheelchair.
- 2. I frequently consult with numerous judges on the Judicial Canon of Ethics.
- 3. I frequently consult with elected officials and candidates for public office on the State ethics laws concerning Campaign Finance disclosures.
- 4. I frequently consult with attorneys on their obligations under the Louisiana Code of Professional Conduct.

5. I represent and advise the Clerk of Court for Jefferson Parish.
6. As President of the Louisiana State Bar Association, among numerous accomplishments:
  - (a) I presided over the Louisiana State Bar Association House of Delegates and Board of Governors meetings in which both bodies voted unanimously to prohibit lawyers from sending mail solicitation letters to accident victims for a period of thirty days from the of an accident [consistent with Florida Bar Association vs. Went For It, Inc. 115 U.S. 2371 (1995)].
  - (b) I created the first State Bar Association Committee in the nation to provide legal referral services for the disabled.
  - (c) I created the Community Involvement Committee - believed to be the first state bar association committee of its kind in the nation.
7. I have frequently presented continuing legal education seminars to lawyers and judges on the subjects of Ethics and Professionalism throughout the states of Louisiana, Mississippi, North Carolina, and in Montreal, Canada.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The only anticipated receipts of funds would be the sale of my law practice and equipment. I have made no arrangements.

I have some rental property for which I am receiving rent.

I also own shares of stock in various publicly held corporations.

I will, of course, comply in every respect with all applicable ethics rules.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will strictly comply with the rules set out in the Judicial Canon of Ethics, including those involving recusal and complete disclosure.

I will not preside over any case in which any party or parties who purchase my practice and equipment are involved - until such time as the debt is paid, and until such time thereafter as is required by the Judicial Canon of Ethics.

Even assuming I will eventually be able to preside over cases involving those parties mentioned above, prior to any trial involving that party within an appropriate period of time from my taking the bench, I will advise the party's opposing counsel of my former relationship, and ask if it objects to my handling the case.

This also applies to the firm and persons with whom I have had an "of counsel" relationship.

I will periodically review any board and civic activities which could potentially cause a conflict.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.) See financial disclosure report attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Dave Treen for Congress 1999 - manager - helped with strategy and fund raising

Richard Ieyoub for Senate 1996 - chairman - helped with strategy

Richard Ieyoub for Attorney General 1998 - chairman - helped with strategy

Mike Yenni for Parish President 1991 - Treasurer - helped with strategy

I have volunteered in the campaigns for the following candidates for judge, and served as their treasurer: Judge Thomas Porteous (1984), Judge Roy Price (1981), Judge Walter Rothschild (2000), Judge Clarence McManus (1982), Judge Susan Chehardy (1998), Judge Shirley Wimberly (1981), and Judge Joseph Grefer (1981). The dates listed for these judges generally do not include dates for re-election campaigns for which I also assisted them.



**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS (each item is estimated)				LIABILITIES (estimated)			
Cash on hand and in banks	684	000	00	Notes payable to banks-secured	25	000	00
U.S. Government securities-add schedule				Notes payable to banks-unsecured	4	500	00
Listed securities-add schedule	30	383	50	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others	2	500	00
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others	2	500	00	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	186	500	00
Real estate owned-add schedule 1,	682	500	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	60	000	00				
Cash value-life insurance	65	186	00				
Other assets itemize:							
Various collections	50	000	00				
Retirement plan	445	806	00	Total liabilities	219	500	00
				Net Worth	2,	800	881 50
Total Assets	3,	072	381 50	Total liabilities and net worth	3,	020	381 50
CONFINGENT LIABILITIES	NONE			GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

<u>Real Estate Owned</u>	<u>Value (estimated)</u>	<u>Mortgage Balance</u> <u>(Estimated)</u>
Home Metairie, LA	850,000.00	
Rental Property # 1 New Orleans, LA	75,000.00	
Rental Property # 2 Metairie, LA	250,000.00	84,700.00 (Bank One)
Rental Property # 3 Metairie, LA	250,000.00	96,800.00 (Bank One)
Summer Resident/Rental Property # 4 Pass Christian, MS	250,000.00	
Unimproved land Abita Springs, LA	7,500.00	

AO-10 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial)	<b>2. Court or Organization</b>	<b>3. Date of Report</b>
Zainey, Jay C.	USDC, Eastern District of La.	10/11/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	<b>5. Report Type (check type)</b>	<b>6. Reporting Period</b>
Article III Judge - nominee	X Nomination, Date 10/10/2001	01/01/2000 to 10/01/2001
	Initial Annual Final	
<b>7. Chambers or Office Address</b>	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>	
441 Dorrington Boulevard Metairie, LA 70005		

Reviewing Officer

Date

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<b>NONE</b> (No reportable positions.)	

1	Trustee	Jay C. Zainey, Professional Law Corporation Profit Sharing Retirement Plan
2	President/Director	Jay C. Zainey, Professional Law Corporation
3	Director	Advocacy Center (non-profit)

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<b>NONE</b> (No reportable agreements.)	

1	2000	Jay C. Zainey, PLC Profit Sharing Retirement Plan with former law firm, no contract
2		Upon appointment, I intend to sell interest in Jay C. Zainey, PLC - no agreements have yet been made.
3		Jay C. Zainey has a personal IRA with Bank One.

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<b>NONE</b> (No reportable non-investment income.)		

1	2000	Jay C. Zainey, Professional Law Corporation, compensation for services	518,622.00
2	2000	Jon A. Gegenheimer, Clerk of Court for Jefferson Parish, compensation for service	30,834.00
3	1999	Jay C. Zainey, PLC, compensation for services	449,500.00
4	1999	Jon A. Gegenheimer, Clerk of Court for Jefferson Parish, compensation for services	17,246.00

FINANCIAL DISCLOSURE REPORT      Name of Person Reporting      Date of Report  
 Zaine, Jay C.      10/11/2021

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	Bank One	Mortgage on Rental Property #1	L
2	Bank One	Mortgage on Rental Property #2	L
3	First USA	Credit Card	J
4	Crescent City Bank	Unsecured Loan	J
5	Louisiana Mortgage Company	Unsecured loan	J
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$3,000,000    P2=\$3,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

		Name of Person Reporting		Date of Report	
		Zainey, Jay C.		10/11/2001	
<b>FINANCIAL DISCLOSURE REPORT</b>		<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b>			
		<i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>			
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period		
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
Place "X" after each asset exempt from prior disclosure.					If not exempt from disclosure (2) Date: (3) Value Gain (4) Identity of (5) Month- Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
1 Rental Property #1 Metairie, Louisiana (2000)	E	Rent	N	W	EXEMPT
2 Rental Property #2, Metairie, Louisiana (2000)	E	Rent	N	W	
3 Rental Property #3, New Orleans, Louisiana (2000)	D	Rent	L	W	
4 Rental Property #1, Metairie, Louisiana (2001)	D	Rent	N	W	
5 Rental Property #2, Metairie, Louisiana (2001)	E	Rent	N	N	
6 Rental Property #3, New Orleans, Louisiana (2001)	C	Rent	L	W	
7 Bank One Account #1 (2000)	D	Interest	M	W	
8 Bank One Account #2 (2000)	D	Interest	M	W	
9 Bank One Account #1 (2001)	B	Interest	M	W	
10 Bank One Account #2 (2001)	B	Interest	M	W	
11 Hibernia Account #1 (2000)	B	Interest	L	W	
12 Hibernia Account #2 (2000)	C	Interest	L	W	
13 Hibernia Account #1 (2001)	B	Interest	L	W	
14 Hibernia Account #2 (2001)	B	Interest	L	W	
15 Bank One Account #3 (2000)	D	Interest	L	W	
16 Crescent City Bank Account #3 (2000)	D	Interest	M	W	
17 Crescent City Bank Account #3 (2001)	B	Interest	M	W	
1 Incl/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

*(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period	
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P) (2) Value Method Code (Q-W) (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month: Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
Place "X" after each asset exempt from prior disclosure.				
NONE (No reportable income, assets, or transactions.)				
18 Hibernia Account #3 (2000)	B	Interest	K W	EXEMPT
19 Hibernia Account #3 (2001)	A	Interest	K W	
20 Bank One Account #3 (2001)	A	Interest	M W	
21 Bank One Account #4 (2000)	D	Interest	L W	
22 Bank One Account #4 (2001)	B	Interest	M W	
23 Hibernia Account #4 (2000)	B	Interest	K W	
24 Hibernia Account #4 (2001)	A	Interest	K W	
25 Jackson National Life Profit Sharing Plan #1	B	Interest	K W	
26 Jackson National Life Profit Sharing Plan #2	A	Interest	K W	
27 Jackson National Life Profit Sharing Plan #3	A	Interest	K W	
28 Jackson National Life Profit Sharing Plan #4	A	Interest	K W	
29 Jackson National Life Profit Sharing Plan #5	A	Interest	K W	
30 Jackson National Life Profit Sharing Plan #6	A	Interest	K W	
31 Jackson National Life Profit Sharing Plan #7	A	Interest	K W	
32 Jackson National Life Profit Sharing Plan #8	A	Interest	K W	
33 Sun Life of Canada Profit Sharing Plan #1	C	Interest	L W	
34 Sun Life of Canada Cash Surrender value Life Ins. #2	B	Interest	L W	
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$500,000.001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

Name of Person Reporting Date of Report  
**FINANCIAL DISCLOSURE REPORT** Zainey, Jay C. 10/11/2001

**VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Amount Code (A-H)	Type (e.g., dividend, rent or interest)	Value Code (J-P)	Value Method (Q-W)	Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Gain	(4) Code (J-P)	(5) Identity of buyer/seller (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions)									
35 Sun Life of Canada Cash Surrender value Life Ins. #3	A	Interest	J	W	EXEMPT				
36 Sun Life of Canada Cash surrender value Life Ins. #4	A	Interest	J	W					
37 Mass Financial/Sun Life Profit Sharing Plan #1	B	Interest	M	W					
38 IRA #1: State Street Bank and Trust (2000)	A	Interest	K	W					
39 IRA #1: State Street Bank and Trust (2001)	B	Interest	K	W					
40 IRA #2: State Street Bank and Trust (2000)	A	Interest	J	W					
41 IRA #2: State Street Bank and Trust (2001)	A	Interest	J	W					
42 Southwest Airlines common stock	A	Dividend	J	T					
43 Stewart Enterprises common stock			J	T					
44 Cardiogenisis common stock			J	T					
45 Reliance Group Holding common stock			J	T					
46									
47									
48									
49									
50									
51									

1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000  
 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market  
 (Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

III. Non-Investment Income. Gross income is an estimate.

Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT Zainey, Jay C.	10/11/2001
SECTION HEADING. (Indicate part of report.)	

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
------	----------	-----------------------------

1		
2		
3		
4	Member	Razoo Stables, LLC
5		
6		
7		
8		

PART 3. NON-INVESTMENT INCOME (cont'd.):

Line	Date	Source and Type	Gross Income
------	------	-----------------	--------------

[illegible]

5	1999	Jefferson Parish, Compensation for services	2,619.00
6	2001	Jay C. Zainey, PLC, compensation for services	364,580.00
7	2000	Greater New Orleans Expressway Commission (spouse)	



	Name of Person Reporting	Date of Report
FINANCIAL DISCLOSURE REPORT	Zainey, Jay C.	10/11/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As President of the Louisiana State Bar Association in 1995-96, I created the Community Involvement Committee. This is believed to be the first State bar association committee of its kind in the nation.

The committee in the past has organized statewide efforts to serve food on holidays and other days at various homeless shelters throughout the state.

The committee also coordinated holiday outreach projects throughout the state in which lawyers donated thousands of dollars and hundreds of hours so that homeless children would receive presents.

This committee still exists today, and continues to provide many services to the disadvantaged of the State.

Additionally, as President of the Louisiana State Bar Association, I traveled the State and spoke about the need for attorneys to donate their legal services to the poor and disadvantaged, and in my continuing legal education seminars which I present on ethics, I continue to remind attorneys not only about Canon 2 of the American Bar Association's Code of Professional Responsibility, but also the Louisiana State Bar Association Rules of Professional Conduct Rule 6.1 which states that "a lawyer should render public interest legal service . . . at no fee or reduced fee . . . to persons of limited means".

I have also represented numerous clients throughout my twenty-five year legal career on a pro bono basis.

In 1998, I received the Legal Services Project Director's Award for my "efforts and dedication in raising awareness of programs that provide free civil legal services to disadvantaged Louisianians". This award was presented to me by the directors of the nine legal services groups that participate in the Louisiana Legal Services Project.

I am also active in our community.

I have been president of my church parish council and president of a local organization which provides assistance to disabled people and their families.

I have served as President of the Jesuit High School Parent's Club, as well as on the Presidents' Advisory Boards of both Jesuit High School and Stuart Hall School.

For many years, I made presentations, along with a member of the Louisiana State Police, to high school students throughout the city on the dangers of drinking and driving.

I have served on the Board of Directors of the Jefferson Performing Arts Society and presently I also serve on the Board of Directors of the Advocacy Center for the Disabled and the Elderly.

One of my finest achievements however, is to have coached the little league baseball champions at Metairie Playground.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

None of which I am aware.

I have been interviewed by the Chief White House Counsel and various other representatives of the Office of the White House Counsel.

I have also been interviewed by representatives of the FBI, and of the Office of Legal Policy of the Department of Justice.

I was also nominated by the President on October 10, 2001.

Additionally, the current president, various members of the board of directors, and numerous past presidents of the New Orleans Federal Bar Association have written letters of support for me, and have forwarded them to the Office of Presidential Personnel.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be

interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The court must concentrate on resolving the case before it. In doing so, every federal judge is required to follow the Constitution of the United States, and the laws as enacted by Congress. The Courts can not make the law - that is the role of the elected officials in Congress.

Specifically, every judge must follow the precedent set by the United States Supreme Court, and - in the Eastern District of Louisiana - the United States Fifth Circuit Court of Appeals.

The Court must first determine if litigants have standing. If they do, the court must then determine if the issue is ripe.

The jurisdictional requirements of "standing" and "ripeness" should not be ignored by the Court simply because the issues involved are of social or political significance.

The Constitution requires the Court to apply the law. The Courts must not - nor do they have the authority to make the laws - that is the sole role of Congress.

The Courts can not change the law at will.

Senator CANTWELL. Well, the committee wants to thank all the family and friends who have traveled to be with us today at this special hearing. Thank you very much. I am sure the nominees very much appreciate your attendance.

I am going to start with a general question similar to what I asked Mr. Melloy about the right of privacy, and if each of you could answer, that would be most appreciated.

Obviously, this committee in its work on anti-terrorism, passing major legislation last year concerning issues of information attainment—there were concerns about, and there are by many Americans, about how information is collected and stored either by government or by businesses or by other individuals.

Could each of you describe what you think are the elements of a fundamental right to privacy, and also comment on how to balance the need for individual privacy against these issues of information collected by government or in other criminal investigations?

Mr. GRITZNER. Thank you, Madam Chair. I think that there are essentially two issues involved here. One would be a social issue and an expectation issue of individuals. The other would be a legal issue.

Certainly, on the social issue I agree with the statement that you made, Madam Chair, that people have an expectation of privacy. Whether that has actually been provided to them in a constitution or in a statute, they do have that expectation, and so they come to the Congress or to the courts expecting that kind of protection.

With regard to the legal expectation of privacy, certainly we know from constitutional law that there have been cases involving the concept of privacy from the Constitution. Whether they would apply to this kind of situation is still something that has not been a resolved issue, but people are looking, I am certain, to the courts for a high degree of vigilance in protecting their privacy.

The concept of being left alone, the concept of being able to maintain the integrity of your own personal records and your own personal lifestyle—they are looking to both the courts and the Congress, I think for assistance in protecting them not only under the current circumstances, but I think they felt that way on September 10 as well.

Senator CANTWELL. Thank you.

Judge Blackburn.

Judge BLACKBURN. Senator, certainly an interesting and a topical question, one that juxtaposes two of our most important concerns: on the one hand, our fundamental right to privacy, perhaps one of the most cherished civil liberties that we enjoy, and on the other side, of course, our growing and burgeoning concerns for national security.

And I think it is going to be exciting and challenging, if confirmed through this process, to be working at the district court level because that is going to be the first line of defense, really the first opportunity to balance those weighty and competing interests.

But we won't be doing that in a vacuum because on the side of both of those issues, there is a well-developed body of law and jurisprudence, and we will be looking to that relevant and sometimes dispositive precedent as we reconcile those competing interests.

Senator CANTWELL. Judge Jorgenson.

Judge JORGENSEN. Madam Chair, if I am fortunate enough to be confirmed, I would, of course, follow the law of the United States Supreme Court and the Ninth Circuit relating to the parameters of the rights to privacy.

I can say my own personal experience is, as an Assistant U.S. Attorney we dealt often with the Freedom of Information Act and, as you said, it is a balancing act. We are balancing the extremely important rights to privacy with the interests of other people's needs to know, also with the interests of government's attempts to engage in law enforcement endeavors.

So I agree that it is a very important balancing act that many times at the trial court level, we will be the first ones to meet those challenges and to make sure that it is properly performed.

Senator CANTWELL. Mr. Leon.

Mr. LEON. Yes. Madam Chairman, I would align myself with the comments of my colleagues, particularly Judge Jorgenson's last remark about applying the law as it is, as set forth by the Supreme Court, and in my case the D.C. Circuit. I would be extremely sensitive to ensuring that the law as set forth there would be applied, and applied fairly and consistently.

As a criminal defense counsel, I am particularly sensitive to ensuring and protecting the individual rights of various individuals and companies. And so I am particularly sensitive, by virtue of my 13 years in the private bar as a criminal defense counsel, to those kinds of concerns.

However, I have also served as a prosecutor and served on a number of occasions as counsel to Congress in national security-type matters, and am well aware of the competing concerns to protect the national security of this country and the need sometimes for information in order to do so.

So I think, as Judge Jorgenson just said, it will be a very interesting and difficult challenge to make sure that those interests are weighed carefully and fairly, and, of course, at all times consistently with what the Supreme Court has held and what the statutes of the country as you set forth in Congress state.

Senator CANTWELL. Thank you.

Mr. Zainey.

Mr. ZAINY. Madam Chair, I agree with my colleagues that the Fourth Amendment right to privacy is very, very important. And, of course, it must be balanced, of course, with the public good. The fact that one is more important than another is not the case. It is a balancing that we must look at very, very closely, and, again, if I have the good fortune of being confirmed by you, to look at the Constitution, look at the laws of the United States, and I will apply those laws to the facts of the particular case.

Senator CANTWELL. Thank you.

I am going to see if my colleagues either have questions for individuals or for the panel as a whole.

Senator GRASSLEY. I think I am going to ask most of my questions of Jim Gritzner. I am interested in, Mr. Blackburn, though, how you could make money in cattle. [Laughter.]

As a farmer, I would think you would want to be a judge so you could keep on farming.

Judge BLACKBURN. I needed that second day job to finance the other. [Laughter.]

Senator GRASSLEY. I understand. You make money like the rest of us do farming, off the farm.

Where was your wife born in Iowa?

Judge BLACKBURN. In Sioux City, Iowa.

Senator GRASSLEY. Very good, very good.

Judge BLACKBURN. Which I mispronounced for the first 10 years of my efforts.

Senator GRASSLEY. You heard me ask Judge Melloy about alternative dispute resolution. I have never discussed alternative dispute resolution with you, even though we have been friends for a long time. What is your view of alternative dispute resolution, and would you seek to use that?

Mr. GRITZNER. Senator, thank you for that question. I think it is an important one. Alternative dispute resolution is amazingly successful, and for that reason alone we should be doing everything we can to foster that as an avenue to resolve the disputes that are in our court systems.

In my practice, I have had a great deal of experience with alternative dispute resolution, both arbitration and mediation. I have found it to be a very successful means to resolve disputes at lesser expense, at lesser use of court time, and therefore less expense to the public as well. I would be very much inclined to encourage in any way that we can the use of ADR in the courts.

Senator GRASSLEY. Again to Mr. Gritzner, if there were no controlling precedent dispositively concluding an issue with which you were presented in your court, and that would be true of the circuit as well as your district, to what sources would you turn for persuasive authority in settling a case?

Mr. GRITZNER. If there is no controlling precedent, Senator, we would carefully look to see if there is something similar to give us some guidance in the law. To the extent that we are looking at a constitutional or statutory provision, we would look very carefully to the language of the document itself to resolve any issues with regard to what is actually said, but look for collateral or similar jurisprudence that would be of some assistance in helping us through that process. But it would be a careful consideration of the facts and any relevant law that applies, if not directly, at least indirectly to the issue.

Senator GRASSLEY. If I could ask each of you for just a short answer to this question, I believe you can give a short answer, starting with Jim.

Do you believe that judges should disclose their financial assets so litigants can assess whether there would be an actual or apparent conflict of interest?

Mr. GRITZNER. I have no objection to that concept, Senator.

Judge BLACKBURN. Neither do I, Senator. I have been doing that for so long, I have lost all sense of financial modesty. [Laughter.]

Judge JORGENSEN. I also have no objection to that concept, Senator.

Mr. LEON. I agree with my colleagues, Senator.

Mr. ZAINY. I have no objection whatsoever, Senator.



Senator GRASSLEY. I thank you all very much, and once again I want to congratulate my two Iowa constituents, Judge Melloy and Jim Gritzner, for their rise in the profession. Hopefully, as I know, you will serve well in your capacities as judges.

Senator CANTWELL. Senator Kyl.

Senator KYL. Thank you, Madam Chairman. I don't have a question, but I would like to make a brief comment perhaps as much for the benefit of those in the audience as the nominees here.

You might have expected that this process would resemble something you have seen on television where very nasty Members of Congress ask very difficult and probing and penetrating and unfair questions of witnesses and get them squirming, and so on.

Well, first, that isn't the kind of people you see up here. But, secondly, the reason these hearings perhaps are not as difficult or as probing as you might have thought is because of the work that goes into the nominations preliminarily.

First of all, as has been alluded to here, each of us on the committee and other Senators have processes and people by which recommendations are made to the President for nominations, and that is a very time-consuming and careful process.

Then the executive branch, the President's office, the Counsel for the President, goes through a very careful vetting process before a nomination is made. And in that process or shortly thereafter, the Attorney General and Department of Justice people are brought in as well.

One of the nominees alluded to the work of the staff here, and I appreciate that reference because they then, our staff, does all of that all over again and they look carefully through volumes of records. And if there is anything about the nominee that might be the least troublesome, that is brought to our attention.

I have sat through a lot of meetings where the appropriate staff person comes and says, I just thought you should see this one thing about this nominee's background, because I have let it be known all of the kinds of things that I want to be apprised of, in addition to the ordinary material I would read.

And then we review the material itself and then the chairman makes a decision. He doesn't waste time. If there is somebody that is not going to get through the process, he will be disinclined to hold a hearing. So when the nominees are presented to us on this panel, it is after a lot of vetting and there is a great presumption that all of these nominees are qualified for the job, will acquit themselves well, and will, in fact, be confirmed.

So we don't have to ask a lot of really tough questions to try to show how smart we are and demonstrate how smart the panelists are. That has already been well-established. I think it is important for us, however, to see the nominees perform. I especially always like to see the family members and to see the reference to the family members because as was alluded to, I think, by Senator Breaux earlier, we are also looking for—and certainly this is part of our political life—we are looking for people whom we know can relate to others before them. I practiced law for 20 years and there were some judges I didn't like to appear before because I didn't think they were very nice; they didn't have judicial temperament.

When you are a district court judge and you have got all manner of people appearing before you, you need to make a good impression on them. They need to understand and appreciate the rule of law. They need to understand that they are being given a fair hearing in whatever situation it might be. So the temperament, the things you bring to that to demonstrate that, are very, very important. And we see that by having you appear before us and to answer some of the questions, which are, in fact, usually relatively pro forma, as you have noted.

So for those who might be a bit disappointed that this isn't a more lengthy or grueling process, that all occurred before, out of the camera's sight, and what we have before us are a group of superbly qualified nominees who I hope will quickly receive consideration by the committee and then move on to the full Senate for its deliberations.

For that reason, I don't have any questions of this panel, Madam Chairman, but I compliment all of them for what they have achieved so far and congratulate them on the expectation that they will be confirmed soon.

Thank you.

Senator CANTWELL. Thank you, Senator Kyl, and thank you for that statement.

I do have a couple of questions for each individual on the panel here, and I think I will start with you, Ms. Jorgenson, about the committee that you served on for the Arizona Supreme Court. It was for more effective juries, and you were involved in drafting recommendations and the adoption of several jury reforms, including amending the criminal rules to allow the judge and counsel to respond more effectively to jurors' questions during deliberations.

Now, as a Federal judge, how would you intend to use that experience and knowledge in your questions during deliberations?

Judge JORGENSEN. Well, my understanding of the Federal courts, at least when I have practiced there, is that they were not—they had the more traditional rules. When I went to State court and was on this committee, we created some interesting new rules that I have actually been able to practice in court because I have handled a lot of criminal trials in State court.

So what I would propose to do if I am confirmed to the district court is perhaps be on a committee relating to jury reform and propose some of these new ideas to the district court level. And the one you particularly mentioned was the issue of when a jury is at an impasse and they need additional information.

Traditionally, we would just tell them no, rely on the information that has already been presented to you. But what the rules in Arizona, the State courts allow us to do now is have either the lawyers maybe make some additional remarks to the jury, perhaps even present some additional evidence at that point, the idea being is we want finality, we want hopefully for the jury to reach a verdict.

So those are the kinds of ideas that I could bring to the district court and propose. Another idea is that we allow jurors to actually ask questions during the trial. I mean, they don't just blurt out questions to the witness, but they write them down and the trial judge reviews them, and if they are appropriate, then asks them of the witness. And I think that that greatly also increases the

chance of not having a mis-trial because a juror maybe didn't understand or didn't have full information. It also lets the lawyers know what the jury is thinking during the process.

So the bottom line is we try to get jurors a little more involved in the process, since they are the ones that are going to be making the ultimate decision. So I would hope that I could bring some of those ideas to the district court and propose them as possible jury reforms.

Senator CANTWELL. Thank you.

Mr. Leon, in reviewing some of the speeches and articles and comments that you have made, you have talked about how the media spotlight has played a somewhat disturbing role in congressional investigations. Obviously, one of the questions that we have been dealing with here is the use of cameras in Federal courtrooms. There is currently a rule in place that prohibits the use of cameras in Federal courtrooms, and the Senate recently passed a bill that gives Federal judges the discretion to determine on a case-by-case basis whether to allow cameras in the courtroom.

Do you believe that there are instances where cameras in Federal courtrooms can enhance public confidence in the system and can help assure the community of fair treatment in the proceedings?

Mr. LEON. Well, thank you for the question, Senator. I think that is a very challenging and difficult issue to wrestle with, I think, frankly for this body and for the Federal judiciary as a whole.

There has been an awful lot of experience that has accumulated over many years with not having cameras in the courtroom, and I gather, listening to the judges, they feel much more comfortable keeping it that way. We have also had some experiences in recent years with different cases in State courts around the country where the presence of cameras in the courtroom was felt by lawyers and judges who analyzed it after the fact that it had a negative impact. Also, there have been people who have said it had a positive impact.

So on the whole, it is one of those close-call questions that I think is a difficult one for a judge to wrestle with. Having been now for 13 years a criminal defense counsel, I am of the opinion, on balance, that it is probably preferable not to have cameras in the courtroom, but to help make special accommodations for the press under those circumstances.

Part of my concern also is a security concern for the jurors in that situation, and the witnesses who appear in that situation. But I think the judges can go out of their way to try to accommodate the media and give them, you know, special access, special seating opportunities, and perhaps even other things to make their job easier.

Senator CANTWELL. Thank you.

Do any of the other nominees want to comment on that?

[No response.]

Senator CANTWELL. If not, Mr. Gritzner, I know you had a question from Senator Grassley, but I wanted to ask, you have extensive litigation experience and your questionnaire indicates that following your clerkship, you have also engaged in the practice of civil litigation.

How do you prepare for the challenge of presiding over criminal cases, especially the multi-defendant, complex cases involving statutes that may not be as familiar to you? How do you prepare for those?

Mr. GRITZNER. An excellent question, of course, for someone who comes from a civil practice. Madam Chair, I think the answer to that question is a lot of hard work at the earliest possible time, but there is a great deal of support available in this process.

In our particular district, I would have tremendous support, if fortunate enough to be confirmed, by both the chief judge and the other judge, the active judge in the district. The probation office provides invaluable support in the process and working through the complex issues of the guidelines. There is also tremendous support in the bar itself in our jurisdiction, where both the prosecution and the defense bar are very capable people who behave in a civil and very professional fashion, and I would expect a lot of support from them as well. But the bottom-line answer to that question is a lot of hard work, which I am fully prepared to do.

Senator CANTWELL. Thank you.

Judge Blackburn, on occasion lawyers sometimes choose not to disclose pertinent information to the court that bears on a juror's impartiality, as was the situation in a case that you presided over, *People v. Archuleta*. In that case, you deemed that the prosecution's decision not to disclose that a juror knew a witness was trial strategy and you did not dismiss the juror.

How did you come to that decision and what are the considerations in making similar decisions?

Judge BLACKBURN. Well, what I actually focused on, Senator, in that case is I attempted to circumvent the issue altogether because of the tenuous relationship between the sitting juror and a prospective defense witness.

I first conducted in limine proceedings to determine the relevance of the prospective defense witness. At the conclusion of the hearing, I sustained the people's objection to the testimony in toto of that witness, and therefore the witness was no longer in the calculus. Therefore I assumed, wrongly, according to the court of appeals, and I think so, that that obviated the necessity for a dismissal of the juror.

For future reference, I am, of course, going to insist that parties for both sides make all relevant disclosures of prospective jurors. As a matter of fact, as a result of the decision in that case, I have included and incorporated in my standard pre-trial checklist that I use in each such trial a question about prospective jurors, and do counsel have any information bearing on the qualifications of those prospective jurors.

Senator CANTWELL. Thank you for that answer.

Mr. Zainey, I wanted to ask you a question similar to Mr. Gritzner's because you have been operating as a sole practitioner in Louisiana. As a sole practitioner, you have been accustomed to working by yourself.

How do you plan to overcome that challenge of working more broadly with other judges in the district, and how do you prepare yourself going from being a sole practitioner into the particular skills and knowledge that will help you do this job?

Mr. ZAINNEY. Well, thank you, Madam Chairman. In 1995 and 1996, I was State bar association president, Louisiana State Bar Association president. And, of course, I had the opportunity to work with many, many lawyers, not necessarily on the substantive law as much as on the procedural law, but actually even more important, on the legal profession, in general, as it relates to ethics, as it relates to professionalism, as it relates to pro bono work. So I have worked with many people in the legal profession on various aspects as it relates to the law.

In particular, however, I have done a lot of work in the criminal field. I know the question to my colleague was in the criminal arena. I do have extensive trial experience. I have tried a number of cases in both the civil and criminal arenas. I have been a member of the Federal public defender panel in Federal district court for, I think, the past 12 years or so, and I have had a number of cases, some of which went to trial, some of which had not gone to trial.

What I will do is—I have a very good relationship with the judges—I will sit down with each of the judges, speak with them about the pluses and minuses, what I need to learn and what I don't know, certainly read law review articles. Certainly, I will work very diligently at studying what I do not know, and as a sole practitioner and as bar president I am very used to working sometimes 18, 20 hours a day.

And, of course, with the good fortune of being confirmed by the Senate, I would look forward to delving into the Federal guidelines, of which I am familiar, having done criminal defense work, of course, and other aspects of the practice of law in Federal court.

Senator CANTWELL. Thank you for your answer, Mr. Zainey.

I want to thank all the panelists for your comments and your answering of those questions. As Senator Kyl mentioned, this is a long process which this is one step in, so we appreciate you being here.

I am going to excuse this panel and we have one more person who would like to give some comments, and so I am going to ask him to come up. So thank you for your testimony.

Senator CANTWELL. We have been joined by one of our colleagues, Representative Tauzin, who would like to come up and give some comments on Mr. Zainey's nomination.

Representative Tauzin, it is good to see you here.

**PRESENTATION OF JAY ZAINNEY, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA BY HON. WILLIAM J. TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative TAUZIN. It is good to see you, Senator.

It is my great pleasure to join you particularly to come and say a few, I believe, very highly complimentary words about the nominee from our State, Jay Zainey. I was listening to your questions of him and I thought I might add some personal touches to the character of the man and to the quality of himself and his family and how well he is suited to be a Federal judge and how well I think the nomination should be received by the Senate, as well as by the White House.

He is obviously a long-time friend of mine. You should know that first. Jay Zainey and his wife, Joy, have been friends and associates. Joy's family in New Iberia, Louisiana, where they make those great tabasco peppers and all that wonderful stuff—the Haik family have been friends and associates of mine through my days in the State legislature, when I served with one of their family members in the State House. So we have been long-time friends.

Their daughter, Margaret, who is here with Joy, his wife, for this hearing, was an intern in my office one summer. So I have had the pleasure of working with her on a professional basis as well.

Jay's reputation in the New Orleans area is so solid, and the State of Louisiana, that it is very easy for me to be here to recommend him because I know I carry with that recommendation the recommendation of all the folks I know in Louisiana who have come to know him and love him and respect him.

As he told you, he served not only on ad hoc committees on ethics and professionalism, and as president of the bar association and the Jefferson Parish Bar Association and, I believe, on the National Council of State Presidents of the Bar, but he has also done ad hoc trial work as an ad hoc trial judge in Jefferson Parish, even traffic court work.

But it is to another area of his life that I want to point as I think a great recommendation of him as a person. He has three children. One of his children is disabled, and he has paid particular attention in his life and in his career to the needs of others around him who were less fortunate, just as he experienced the problems of disability in his own family.

He established, for example, a committee of the State bar association to provide legal services for the disabled in our State. He created a community action committee that is now doing extensive, numerous charity projects throughout our State, with the lawyers of our State being the principal components of that organization, literally telling our bar in Louisiana you have got a bigger responsibility than just to go out and practice law and make a hard dollar, but you have got an obligation to personally commit your time and your attention to the needs of those around you.

He has been involved in the board of directors of the Advocacy Center for the Disabled and Elderly in our State. He is the past president of The Extra Mile organization, which provides services to the mentally ill in our State, and he is a past board member of the Jefferson Parish Performing Arts Society, as well as a past member of the President's Committee on Mental Retardation Task Force.

You get a picture here of a guy that is deeply committed not only to his family and to his law practice, but to the whole business by which attorneys in this country should ethically provide service and counsel to American citizens when they need legal counsel and services.

I am just delighted, frankly, to be able to come to you and recommend him personally. I know that you all do a thorough job, as the White House tries to do every time we have a nominee, in ensuring that the caliber of the candidates for our judiciary are not only capable, but quality people dedicated to improving the quality of our judiciary and to working hard to make sure that we are

proud that we not only sponsored them, but in your case that you approve the nominations.

Jay Zainey is one that I believe you are going to be very proud of as the years go forward. He is going to be an asset not just to our State and our Federal bench in Louisiana, but to the national bench, and I predict you haven't seen the last of him. He has got every quality that I think is going to make him a great Federal judge and perhaps even advance him somewhere along the line.

Again, Madam Chairwoman, I am delighted to see you again and to be with you both, Mr. Kyl, and to recommend a dear friend and I think a great nominee to you for confirmation.

Senator CANTWELL. Thank you, Representative Tauzin. We do appreciate you coming over, both the committee and I am sure Mr. Zainey does as well, and giving your comments about a long-time friend. We appreciate those comments. Thank you.

Representative TAUZIN. Thank you very much.

Senator CANTWELL. That concludes our hearing. I want to thank my colleagues, Senator Kyl and Senator Grassley, for attending most of the hearing, and Senator Leahy for his quick participation. These hearings are important for us to move along on, but they only happen when colleagues show up to make them happen, so we appreciate that.

Again, to all of those who have attended this hearing, we appreciate the nominees' open and honest answers to our questions.

This hearing of the Senate Judiciary Committee is adjourned.

[Whereupon, at 3:30 p.m., the committee was adjourned.]





**NOMINATION OF D. BROOKS SMITH, OF  
PENNSYLVANIA, TO BE CIRCUIT JUDGE  
FOR THE THIRD CIRCUIT; RALPH  
BEISTLINE, OF ALASKA, TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF ALASKA;  
DAVID CHARLES BURY, OF ARIZONA, TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF  
ARIZONA; AND ROBERT RANDALL CRANE,  
OF TEXAS, TO BE DISTRICT JUDGE FOR  
THE SOUTHERN DISTRICT OF TEXAS**

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**TUESDAY, FEBRUARY 26, 2002**

UNITED STATES SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The committee met, pursuant to notice, at 10:00 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Russell D. Feingold, presiding.

Present: Senators Feingold, Biden, Edwards, Hatch, Specter, Kyl, and Sessions.

**STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR  
FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. The hearing will come to order. We have a vote that has already started and I would like to get at least some of the witnesses taken care of before we have to leave for a vote.

Good morning. Welcome to this nominations hearing of the Senate Judiciary Committee. We have on the agenda one of President Bush's nominees to the United States Court of Appeals and three nominees to the U.S. District Court. As I said, we have a complicated bit of scheduling this morning, at least initially, because the Senate is now voting on a judicial nominee on the floor, but I would like to begin the hearing now and hopefully make some progress on our first panel before I have to vote myself. Depending on whether another Senator is here and able to chair the hearing and whether our Senatorial witnesses are here to testify, we may continue the hearing when I leave or we may take a short recess.

At any rate, in an effort to move to questions for the nominees as soon as possible, I will not make any additional opening remarks, and since Senator Specter is here, I will turn to him for an opening statement.

**PRESENTATION OF D. BROOKS SMITH, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman. Thank you for convening these hearings. I will use my opening statement to present the nominee for the Court of Appeals for the Third Circuit, who is Judge D. Brooks Smith. Senator Santorum and I have recommended him to the President and the President has submitted his name to the Senate.

He comes to this hearing with an extraordinarily distinguished record as a practicing lawyer and as a judge. He practiced privately in the firm led by Robert Jubelirer, a longtime Pennsylvania State Senator and now Lieutenant Governor of Pennsylvania, who has known Judge Smith all his life and has brought forward a very, very strong recommendation.

Judge Smith served as District Attorney of Blair County, where Altoona is located. He was the special prosecutor coming in to replace the District Attorney on some very highly sensitive matters. He was a judge of the Court of Common Pleas of Blair County for four years. Senator Heinz and I recommended him to President Reagan, who appointed him to the United States District Court for the Western District of Pennsylvania. Judge Smith has served there since confirmation in 1988. He has been the Chief Judge of the Western District Court now for about 18 months.

He has a very, very distinguished record. In taking over the judgeship in the Western District, he sat in Johnstown. Senator Heinz and I felt that there ought to be a station in Johnstown to accommodate the litigants and the lawyers in that area of Western Pennsylvania and there is a little competition between Johnstown and Altoona. It is present in every State. We picked an Altoona lawyer to be judge. We picked Johnstown as the seat, and it is a lot easier to sit in the big city, but Judge Smith sat in Johnstown, where he performed a great service.

Some issues have been raised, and I have reviewed the record in detail and I am satisfied that Judge Smith has complete responses and answers to any questions which have been raised. They have been publicized. He brings an extraordinary record. I could talk at greater length, but I am going to leave the bulk of this presentation to my colleague, Senator Santorum, and I am going to be—it is too late now to be brief, but relatively brief in light of our crowded schedule this morning.

Thank you, Mr. Chairman.

Senator FEINGOLD. Thank you, Senator Specter.

I am now going to turn to the junior Senator from Pennsylvania, and if Senator Specter would allow, I am going to go proceed to vote and come back as soon as I can and then we will go to Senator Gramm. If you have to leave in order to vote on time, you can just recess the hearing and we will go as fast as we can. Senator Santorum.

**PRESENTATION OF D. BROOKS SMITH, NOMINEE TO BE CIRCUIT JUDGE FOR THE THIRD CIRCUIT BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SANTORUM. Thank you very much, Mr. Chairman. Mr. Chairman, I just want to submit my statement for the record. I just want to make a couple of comments.

Judge Smith has incredible support of an incredibly broad variety of individuals and organizations in Western Pennsylvania. Every single judge and senior judge of the Western District of Pennsylvania supports his nomination. I want to submit also for the record, I will not go through an incredibly long laundry list of individuals as well as every U.S. Attorney from the Western District, going back to Jimmy Carter's time, Federal judges from the circuit level, 17 members of Congress, including every member of Congress, most of whom are Democrats, from Western Pennsylvania support his nomination, heads of bar associations, women's bar associations, Supreme Court justices, the ones that are listed here are all Democrats.

This is a nominee without—I have not seen anyone come forward who has practiced before him or served with him who has come out and opposed him. There have been some national interest groups who have tried to weigh in and raise a case which I know Senator Specter alluded to.

I want to submit for the record an article by the plaintiffs' attorney who was supposedly adversely affected by Judge Smith's ruling. He wrote an op-ed last Friday on this issue. I would like to put that in the record. The headline is, "Judge Smith's Rulings in No Way Hint at Favoritism Toward Bank in Black Case," and then today, the trustee in the case, who happened to be the former Attorney General and former Governor of Pennsylvania, Dick Thornburgh, wrote a letter saying, "Setting the Record Straight on Judge D. Brooks Smith."

There is a lot of misinformation out there on one particular case. It is misinformation. I think this sets the record straight. The bottom line is, I have never encountered a nominee in my time in the Senate who has a broader base of support and more positive things to be said about him than Judge Smith and I hope for a very quick confirmation of his nomination. Thank you, Mr. Chairman.

Senator SPECTER [presiding]. Thank you very much, Senator Santorum. Without objection, all of those documents will be included in the record.

[The prepared statement of Senator Santorum follows:]

**STATEMENT OF SENATOR RICK SANTORUM ON THE NOMINATION OF THE HONORABLE BROOKS SMITH FOR THE U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, FEBRUARY 26, 2002**

Mr. Chairman and members of the Committee, Thank you for the opportunity to introduce Judge D. Brooks Smith and speak on behalf of his nomination. Judge Smith is extraordinarily well qualified to be a Circuit Court Judge. It is my honor to introduce him to the Committee and strongly recommend him as a dedicated public servant. Judge Smith is now Chief Judge of the U.S. District Court for the Western District of Pennsylvania. He has more than 17 years of judicial experience at the federal and state levels and is widely respected throughout Pennsylvania. Judge Smith was rated "Well Qualified" by the ABA and rated "Highly Recommended" by the Allegheny County Bar Association and the Somerset County Bar Association.

The Tribune-Democrat of Johnstown, Pennsylvania [2/16/02] has written that "Many lawyers who appear before Smith would characterize him as intelligent, conscientious and of high personal integrity. . . . He's been a shining star in the Western District Court system."

Judge Smith is from Altoona, Pennsylvania. He graduated from Franklin and Marshall College in Lancaster, Pennsylvania and Dickinson School of Law in Carlisle, Pennsylvania. Judge Smith previously served the public as an Assistant District Attorney and District Attorney of Blair County. He served for four years as a Court of Common Pleas Judge before becoming a federal District Judge in 1998. For more than a year, Judge Smith has been the Chief Judge of the United States District Court for the Western District of Pennsylvania.

I am pleased to inform the committee that Judge Brooks Smith's nomination has broad support—from both parties and all quarters of Pennsylvania. Smith is supported by former Attorney General and Pennsylvania Governor Dick Thornburgh as well as Mark Singel, the former Lieutenant Governor and Acting Governor of Pennsylvania, a Democrat. Seventeen Members of Congress from Pennsylvania—including eight Democratic Representatives—have signed a letter supporting Smith. He is also supported by every U.S. Attorney for the Western District of Pennsylvania who served under Presidents Jimmy Carter, Ronald Reagan, George H.W. Bush, and Bill Clinton. In addition, Judge Smith is supported by all ten of this District Court colleagues—including seven judges appointed by Democratic Presidents.

Judge Smith is supported by prominent women and women's groups. These include the board of the Women's Bar Association of Western Pennsylvania, its Co-President, Shelly Pagac, and the President of the Allegheny County Bar Association, Amy Greer. Judge Smith is also supported by prominent African-Americans, including former Third Circuit Judge Timothy Lewis and Judge Anne Thompson of the U.S. District Judge for the District of New Jersey, who worked with Judge Smith on the Third Circuit Task Force on Equal Treatment in the Courts. Judge Smith is also supported by the President of the Pennsylvania Bar Association (PBA), Reginald Belden, and three former PBA Presidents, Thomas Cooper, Vincent Grogan, and Marvin Lieber. Judge Smith is supported by the Dean of the Duquesne Law School, Nicholas Cafardi; the Dickinson Law Schools, Peter Glenn; and the Pittsburgh Law School, David Herring. I can provide a more comprehensive list of endorsements by those who know his character and the quality of his work.

In closing, I would like to thank my colleagues for scheduling this hearing and ask for your support for his nomination. I am confident that you will be impressed with Judge Smith's qualifications and his commitment to serving the public in the judiciary. I look forward to the Senate's consideration of his nomination and his confirmation to the United States Circuit Court of Appeals for the Third Circuit. Thank you.

Senator SPECTER. I now have the pleasure to turn to our distinguished colleague, Senator Phil Gramm. It is the first time I have had an opportunity to cross examine Senator Gramm and I am looking forward to it. [Laughter.]

**PRESENTATION OF ROBERT RANDALL CRANE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE STATE OF TEXAS**

Senator GRAMM. Thank you, Mr. Chairman. I can be brief. I am here to introduce Randy Crane, who is one of the outstanding young lawyers in my State. He graduated from the University of Texas with a degree in economics when he was 19 years old. He was an honor graduate of the law school. He was awarded an editorial staff position on the Harvard Journal of Law and Public Policy based on his record in law school.

In his third year in law school, in an extraordinary action, he was made a temporary member of the bar so that he could do work for the indigent in the Austin area. He has been president of the Young Lawyers Association. Anything you can name that is good, productive, and contributing toward the well-being of the people of the valley of Texas, he has done it.

I am very happy to be here with my dear friend, Ruben Hinojosa, who is also going to make a statement on Randy Crane, and you are not going to consider people with more brainpower and more integrity than this young man.

Senator SPECTER. Senator Gramm, if you make a representation of brain power, the committee accepts it.

Senator GRAMM. Thank you.

Senator SPECTER. Is this to be your last nominee for the Federal bench, Senator Gramm?

Senator GRAMM. I hope not. I hope to make many more. [Laughter.]

Senator SPECTER. Well, had it been, we would have just waved him on through. [Laughter.]

Since it is not, we will consider him carefully.

Senator GRAMM. Thank you. And he has a lot of his kinfolks here, so I hope he will be given a chance to introduce them, 14 in all. I want to be sure when he gets up here he is given a chance to introduce them. Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Senator Gramm.

Congressman Hinojosa.

**PRESENTATION OF ROBERT RANDALL CRANE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS BY HON. RUBEN HINOJOSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative HINOJOSA. Thank you very much, Senator Specter. It is a pleasure to be here before you and to be able to be joined by my good friend, Senator Phil Gramm from Texas.

I want to say that I am honored to be here on behalf of one of my constituents. This young man, Randy Crane, is a real standout and I want to talk a little bit about him and his family. I believe that what I am going to say about this young man is from the heart. I know a great deal about his family, his parents and grandparents, and so I am very pleased to be able to know him and the entire family as I do.

I am also pleased that Senator Phil Gramm preceded me and said a few things about his support as well as I know that Kay Bailey Hutchison also has a great deal of respect and support for Randy Crane. If I were to tell you and list the broad support that he brings from both Democrats and Republicans, regional leaders from my area, it would be a pretty long list.

I represent the 15th Congressional District of Texas, which includes 11 counties, Hidalgo County being the largest one of the 11, and that area is located—

Senator SPECTER. Congressman, I am sorry to interrupt you, but there are a little over three minutes left in our vote, so Senator Sessions and I are going to have to excuse ourselves. It is unusual, but we are leaving you in charge of this Senate hearing. [Laughter.]

Representative HINOJOSA. I will be very pleased to represent you, Senator Specter.

Senator SPECTER. We have total confidence in your candor and integrity, so we will accept your statements, but why do you not

just proceed and finish your statement and we will return just as soon as we can.

Representative HINOJOSA. Thank you, Senator. Would you have any objections if I wait until you return? I want to have the opportunity to have a dialogue and answer any questions that you might have. This is something that is very important to my area.

Senator SPECTER. We thought we would accommodate you the other way, but we would be glad to hear your testimony when we return. The hearing is now recessed.

Representative HINOJOSA. Thank you.

[Recess from 10:13 a.m. to 10:38 a.m.]

Senator SPECTER. Senator Feingold, chairman of this hearing, has asked me to proceed in his absence. He is on the floor where there are some comments about campaign finance legislation.

I see we are joined by Senator Stevens. Congressman, would you mind if we interrupted your testimony to hear from Senator Stevens?

Senator STEVENS. I would be perfectly willing to wait, Senator. You are the chairman.

Senator SPECTER. It is your choice and I choose you.

Senator STEVENS. Thank you very much.

Senator SPECTER. Senator Stevens has been here since 1966–67 and he is a very senior member of our body and I know he has got some pressing obligations on the Appropriations Committee, so let us take Senator Stevens at this time. Is it all right with you, Congressman?

Representative HINOJOSA. Absolutely.

Senator SPECTER. Okay. Senator Stevens.

**PRESENTATION OF RALPH BEISTLINE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA BY HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA**

Senator STEVENS. Thank you very much, Mr. Chairman. As I said, seeing as you are assuming the chair, I thought maybe there had been a revolution around here.

Senator SPECTER. There has been. [Laughter.]

It is called the Jeffords revolution.

Senator STEVENS. Senator Murkowski and I are here. I will be brief. We are here to recommend to the committee the confirmation of Ralph Beistline. He is an eminent lawyer, a member of the Superior Court bench in Alaska. I have known his family for as long as I have been in Alaska and it is a great honor, really, to be able to introduce him to you.

He is the former president of the Alaska Bar Association. He was a member of the Board of Governors of the Bar Association. He has been our representative for Alaska attorneys to the Ninth Circuit Court of Appeals Judicial Conference and has been the editor of the Alaska Bar Association newspaper. He has a distinguished history in terms of his participation in the Boy Scouts movement of our State. He was on the executive board of that and he is a graduate of our university, so we are very proud of him and I am delighted that the President has nominated him to be a Federal District judge. I thank you for your time.

Senator SPECTER. Thank you very much, Senator Stevens. Thank you for coming to introduce him.

Senator Murkowski.

**PRESENTATION OF RALPH BEISTLINE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA BY HON. FRANK MURKOWSKI, A U.S. SENATOR FROM THE STATE OF ALASKA**

Senator MURKOWSKI. Thank you very much. Good morning. I am pleased to see you in the chair, at least temporarily, but we do the best we can around here. [Laughter.]

Senator SPECTER. We are going to move the confirmation of Judge Pickering in another five minutes. [Laughter.]

Senator MURKOWSKI. I am honored to join my senior colleague to introduce Judge Ralph Beistline to your committee. I certainly unconditionally support his nomination to the Federal bench in my State of Alaska.

I know your committee has reviewed the qualifications of the judge and even a cursory review of his credentials reveals a jurist that is eminently qualified to serve our nation and my home State. Judge Beistline has dedicated his life to advancing the legal profession, serving the clients diligently, and as a Superior Court judge, provided reasoned and prudent legal judgments.

But I am here to tell you about Judge Beistline, the man. Judge Beistline is a true Alaska born, Fairbanks, Alaska, to be precise. Now, I am not the type of person that goes around telling people how old they were, but he has been living in Alaska for about 52 years and I think he was two years old when he came there, so from the standpoint of residency, he is certainly well qualified.

Such tenure is important in our State. We are unique. We have complex issues, as most of our membership is aware, and I firmly believe that a judge must understand the history of a community and Judge Beistline certainly reflects that experience and expertise. He has always served the people of our State well, in part because he has spent most of his life working for and living with Alaskans.

Judge Beistline will be the first to tell you that his primary job is as a husband and father. His wife, Peggy Ann, who is here this morning, runs a floral shop in Fairbanks. They have five children, Carrie, Daniel, Tamara, Rebecca, and David, and throughout their years in Alaska, the Beistlines have always worked to improve their community and the community is better off because of it. Their professional endeavors, their civic work, and their family values have been an asset to the Fairbanks community.

Again, as I have stated before, I enthusiastically support the nomination of Judge Ralph Beistline to the Federal Court in Alaska. I encourage the committee to act quickly on the nomination. Upon your review of his qualifications, I am sure you will see the appropriateness of his nomination and the benefit he will bring to the Federal judiciary and the people of Alaska.

I appreciate the opportunity to support his nomination this morning.

Senator STEVENS. I might add for the Senators, we run a bar poll in Alaska and our judicial nominees are selected really by the bar

itself in terms of their nomination to people who are qualified. Judge Beistline was really selected, in effect, by the bar itself, so I do commend his nomination to you.

Senator MURKOWSKI. On the other hand, we had something to do with it.

Senator FEINGOLD [presiding]. I thank all the panel very much for being here to testify on behalf of these nominees.

Senator STEVENS. Any questions, Chairman Feingold?

Senator FEINGOLD. We have no questions that I know of. Senators Specter, Sessions, Biden, any questions for the panel?

[No response.]

Senator FEINGOLD. Thank you for taking the time.

Senator SPECTER. Mr. Chairman, Congressman Hinojosa was in the midst of his testimony.

Senator FEINGOLD. I did not realize he had not finished. Excuse me. Congressman, please finish your testimony.

Senator STEVENS. Thank you very much for the courtesy you extended us.

Representative HINOJOSA. It is my pleasure.

Senator BIDEN. You will return the favor on the House side, will you not?

Representative HINOJOSA. We certainly will. We will certainly be asking for that.

Senator Feingold, thank you for allowing me the opportunity to address you and all the other members of the Senate Judiciary Committee. I am here to introduce my constituent, Randy Crane, whose nomination for the U.S. Southern District judge is under consideration. I am also pleased that Senator Phil Gramm, senior Senator from Texas, was here earlier and spoke on Randy's behalf.

I said earlier that Randy had broad support, both from Democrats and Republicans in my area. Many of the regional leaders are all rooting for Randy.

I represent the 15th Congressional District of Texas, which includes Hidalgo County along the United States-Mexico border. The 2000 census figures published this last year show that the population of Hidalgo County increased by 48 percent over the past ten years before, making it the third-fastest growing region of the country.

With this enormous population growth has come a corresponding increase in the caseload of the already overloaded Federal Courts in the Southern District of Texas. In fact, the Southern District has the third highest number of criminal case filings in the nation. Judicial relief for my constituents is desperately needed.

Randy Crane is well qualified for the position of Federal judge. Senator Gramm gave long detail about his educational background and I will not repeat it. Not only does he have the legal experience and academic qualifications necessary, but as a native South Texan and Mexican-American, he understands the unique cultural and socio-economic character of the region. He was born and raised in South Texas and understands the importance of being bilingual and bicultural.

Although he currently has an active practice as a partner with the law firm of Atlas and Hall, he still finds the time to serve the community through his work with the American Cancer Society,



the McAllen International Museum, and countless charities and organizations. He is an active member of the Hidalgo County Young Lawyers Association. He is very active in the State Bar of Texas and he is active in the Texas and Mexico Bar Association.

I have known Randy and his family for many years. His father, Bob, is also a highly respected member of the South Texas legal community. He has served as Vice President of the University of Texas-Pan American at Edinburg. His mother graduated Summa Cum Laude from the University of Texas-Pan American and went on to become a teacher. She raised two boys and girls. The family tradition of public service and love for the law will serve Randy well as a Federal judge.

In closing, I want to say that Randy's nomination has the support of Senator Kay Bailey Hutchison and he has been unanimously approved by the American Bar Association. I am confident that as today's confirmation hearings continue, you, too, will realize what a fine candidate Randy Crane is and how suited he is for this position in South Texas.

Thank you for allowing me to address the committee and present Randy Crane for your consideration.

Senator FEINGOLD. Congressman, thank you for your testimony and your patience. I am sorry to delay your testimony.

Representative HINOJOSA. Are there any questions, Mr. Chairman?

Senator FEINGOLD. I have no questions. Are there any questions from anybody on the panel?

Senator SPECTER. No questions.

Senator FEINGOLD. Senator Biden.

Senator BIDEN. Thank you.

Representative HINOJOSA. Thank you very much.

Senator FEINGOLD. Let me also recognize Congresswoman Melissa Hart of the Fourth District of Pennsylvania. She has not chosen to speak, but I understand she is here in support, as well, of Judge Smith for his appointment to the Third Circuit Court of Appeals.

Ms. HART. Thank you.

Senator FEINGOLD. Welcome, and it is good to see you here.

I would like to insert into the record a statement from Senator Leahy.

I would also like to include a statement from Senator Cantwell.

Now we can go to the first nominee, Judge D. Brooks Smith of Pennsylvania, who has been nominated to fill a vacancy on the United States Court of Appeals for the Third Circuit. If you would come forward, please, and please stand to be sworn.

Do you affirm that the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth?

Judge SMITH. I do.

Senator FEINGOLD. Thank you, Judge.

Judge Smith is a graduate of Franklin and Marshall College and Dickinson School of Law. He is currently judge on the United States District Court for the Western District of Pennsylvania. Judge Smith served as the District Attorney in Blair County, Penn-

sylvania, and as a judge on the Blair County Court of Common Pleas before being elevated to the Federal bench in 1988.

Judge, if you have introductions to make or a statement you would like to make before we begin the questioning, I will recognize you for that purpose at this time.

**STATEMENT OF D. BROOKS SMITH, NOMINEE TO BE DISTRICT  
JUDGE FOR THE THIRD CIRCUIT**

Judge SMITH. Thank you very much, Mr. Chairman. I do not want to prolong these proceedings with a statement, but I would be remiss if I failed to do three things. One is to introduce my wife of 25 years, Karen, who is with me.

The other is to also note that Congressman Coyne was present earlier. I believe he has since departed.

Senator FEINGOLD. That will be noted on the record.

Judge SMITH. But I thank him. And also to generally, without introducing everyone by name, thank those friends and supporters who are present from Pennsylvania and elsewhere to be with me today. Thank you, Mr. Chairman.

[The biographical information of Judge Smith follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
David Brookman Smith, commonly known as D. Brooks Smith
2. Address: List current place of residence and office address(es).  
  
Residence: Altoona, Pennsylvania  
  
Chambers: Penn Traffic Building  
319 Washington Street, Room 104  
Johnstown, PA 15901  
  
United States Courthouse  
Grant Street & 7<sup>th</sup> Avenue  
Pittsburgh, PA 15219
3. Date and place of birth.  
  
Born December 4, 1951 at Altoona, PA
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married Karen Elaine Hall, April 22, 1977. Wife is a vice president and commercial loan officer with Promistar Bank, Logan Boulevard, Altoona, PA.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Franklin and Marshall College  
Attended Fall 1969-Spring 1973  
B.A. Degree conferred June 1973  
  
Dickinson School of Law  
Attended Fall 1973-Spring 1976  
J.D. Degree conferred June, 1976

Washington Semester Program  
American University  
Attended Fall Semester, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment:

1973 Broadcast news reporter (summer)-WRTA Radio  
1974 Law clerk, Solicitor's Office, City of Altoona (summer)  
1975 Law clerk, Jubelirer, Carothers, Krier & Halpern  
    (summer)  
1975-76 Research Assistant(part-time)-Senate of Pennsylvania  
1976-79 Associate Attorney-Jubelirer, Carothers, Krier &  
    Halpern  
1980-84 Partner-Jubelirer, Carothers, Krier, Halpern & Smith  
1977-79 Assistant District Attorney of Blair County (part-  
    time)  
1981-83 Special Assistant District Attorney of Blair County  
    (Part-time)  
1983-84 District Attorney of Blair County (part-time)  
1983-84 Partner-S/U Associates  
1984-88 Judge, Court of Common Pleas of Blair County,  
    Pennsylvania  
1988-present District Judge, United States District Court  
    for the Western District of Pennsylvania  
2/1/01-present Chief Judge, United States District Court for  
    the Western District of Pennsylvania

Board Memberships:

Late 1970's-early 1980s-Board of Directors, Salvation Army  
    of Altoona  
Late 1970's-early 1980s-Board of Directors, Blair County  
    Society for Crippled Children and Adults (Easter Seals)  
Late 1970s-1984-Board of Directors, Family and Childrens'  
    Service of Blair County  
Early 1980s-Board of Trustees, Altoona Area Public Library  
Mid 1980's-Advisory Board, Domestic Abuse Project of Altoona  
1993-97 Board of Directors, Federal Judges Association

1993-present Board of Trustees, Saint Francis University  
(formerly Saint Francis College)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Member, Pi Gamma Mu (International Social Science Honor Fraternity)

Named "Person of the Year" in September, 1997 by the Blair Bedford Central Labor Council ("For his outstanding contribution to the community and to the working men and women of our area.")

Presented an honorary membership in October, 1999 by the Federal Bar Association (Western Pennsylvania Chapter) ("in recognition of his exemplary service as a member of the Federal Judiciary")

Awarded the Prince Gallitzin Cross in June, 2000 by Bishop Joseph Adamec of the Altoona-Johnstown Diocese ("in recognition of service to the Church of Altoona-Johnstown...")

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member, Allegheny County Bar Association-	
Federal Section Council member	1989-present
Board of Governors (ex officio)	2/01-present
Member, American Law Institute	12/00-present
Member, American Judicature Society	1992-present
Member, Federal Bar Association-Western Pennsylvania Chapter	

(Advisory Board)	1998-present
Member, Federal Judges Association	1989-present
Member, Pennsylvania Bar Association	1976-present
(membership lapse several years during early 1990s)	
Member, Judicial Council of the Third Circuit	2001-present
Member, Space and Facilities Committee of the Third Circuit	1998-present
Former chair, Local Rules Committee, Board of Judges of the United States District Court for the Western District of Pennsylvania	1994-2001
Former member, American Bar Association	1976-1992
Former member, Blair County Bar Association	1976-1988
Former co-chair, Rules of Court Committee	1979-1982
Former member, Advisory Committee on Criminal Rules, Judicial Conference of the United States	1993-1999
Former member, Criminal Procedural Rules Committee of the Supreme Court of Pennsylvania	1986-1989
Former member, EDP Steering Committee on Court Automation (ad hoc committee of the Supreme Court of Pennsylvania)	1987-1988
Former member, National District Attorneys Association	1984
Former member, Pennsylvania Conference of State Trial Judges	1984-1988
Former chair, Legislative Committee	1987-1988
Former co-chair, Economics and Finance Committee	1986-1988
Former member, Pennsylvania District Attorneys Association	1977-79; 1984
Former member, Pennsylvania Trial Lawyers Association	1981-1984

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to no organizations that are active in lobbying before public bodies, except to the extent the Federal

Judges Association can be said to lobby Congress on issues relating to judicial compensation and other matters affecting the federal judiciary.

All other organizations of which I am currently a member:

Amen Corner (social)  
Blair County Historical Society  
The Pennsylvania Society  
Saint Thomas More Society  
The Law Club (social)  
The Nature Conservancy

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Pennsylvania  
(Admitted October 27, 1976)

U.S. District Court for the Western District of Pennsylvania  
(Admitted July 19, 1979)

U.S. District Court for the Middle District of Pennsylvania  
(Admitted October 7, 1983)

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have neither written nor edited any books or reports. I have written the following published articles, and given the following speeches which were published:

"The Managerial Judge and Y2K Litigation," 18 Rev.Lit. (U. Of Texas Law School) 403 (1999) (keynote speech delivered at symposium on "Litigating the Year 2000 Issue," University of Texas School of Law, February 12, 1999 at

Austin, Texas

- "Voir Dire in Federal Criminal Trials: Should Counsel Finally Take Part?" Pittsburgh Legal Journal (Daily Edition), Monday, April 15, 1996
- "The Art and Etiquette of Stating Objections," Pittsburgh Legal Journal, April 1993, at 7, reprinted in The Pennsylvania Lawyer, May, 1994, and in Trial, May, 1995 (Vol. 31, No. 5)
- "Court-Annexed Arbitration in the Western District: Figures and Feedback," Pittsburgh Legal Journal, February, 1994, at 33
- "A Judicial Perspective On The Proposed Amendments To Fed.R.Civ.P. 26," Pittsburgh Legal Journal, July, 1993, at 7
- (SEE ATTACHMENT "A" FOR COPIES OF THE FOREGOING ARTICLES)

Other speeches I have given are as follows:

- "How To Try A Really Bad Case," delivered at the Pennsylvania Bar Association's Civil Litigation Section, on March 22, 2001 at Pittsburgh, PA
- "The Lawyer As Peacemaker," delivered at the Gourley Moot Court Dinner, Academy of Trial Lawyers of Allegheny County, on February 15, 2001 at Pittsburgh, PA
- "The Lawyer As Peacemaker," delivered at the annual Seniors Dinner at the Dickinson School of Law of the Pennsylvania State University, on April 6, 2000 at Carlisle, PA
- Remarks delivered at the Gourley Moot Court Dinner, Academy of Trial Lawyers of Allegheny County, on February 17, 2000
- "What Judges Expect of Lawyers," remarks delivered during Panel discussion on the same subject at the Third Circuit Judicial Conference, on October 17, 1999 at Pittsburgh, PA
- Keynote Speech delivered at the Pennsylvania Political Science Association annual convention on April 3, 1998 at Juniata College, Huntingdon, PA
- Remarks delivered during panel discussion on "The Federalization of Criminal Law" at the Federalist Society's 1997 National Convention, on October 16, 1997 at Washington, D.C.
- Remarks delivered at the United Way Campaign Kick-off Luncheon, August 31, 1994 at Johnstown, PA
- Remarks delivered as panelist on topic of "Court-Annexed



Arbitration," at National ADR Institute for Federal Judges, on November 13, 1993 at Harvard Law School, Cambridge, Mass.  
 Remarks delivered on "Principled Federalism" at meeting of the Pittsburgh Chapter of the Federalist Society, on June 29, 1993 at Pittsburgh, PA  
 "Remarks on Proposed Amendments to Fed.R.Civ.P. 26," delivered at meeting of The American Law Firm Association, March 1993, at Rancho Mirage, Calif.  
 Remarks on the trial of a patent infringement case, delivered to the Pittsburgh Intellectual Property Association, March 1991, at Pittsburgh, PA  
 (SEE ATTACHMENT "B" FOR COPIES OF THE FOREGOING SPEECHES)

13. Health: What is the present state of your health? List the date of your last physical examination.

The state of my health is good. My last physical examination was on February 15, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I served as a judge of the Court of Common Pleas of Blair County, Pennsylvania, a trial court of general jurisdiction, having taken office on December 21, 1984, following appointment by Governor Dick Thornburgh, and after unanimous confirmation by the Senate of Pennsylvania. Thereafter, in 1985, I was elected to a ten-year term with the nominations of both the Republican and Democratic parties.

In 1987, I was appointed by Chief Justice Robert Nix of the Supreme Court of Pennsylvania to serve as Administrative Judge of the Court of Common Pleas.

I am presently the Chief Judge of the United States District Court for the Western District of Pennsylvania, having been elevated to that post on February 1, 2001. The district court is the federal system's trial court. I was appointed as a district judge by President Reagan, and have served since November 1, 1988.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) TEN MOST SIGNIFICANT OPINIONS:

1. Sani-Dairy, a Division of Penn Traffic Co., Inc. v. Espy, 939 F.Supp. 410 (W.D.Pa. 1993), aff'd, 91 F.3d 15 (3d Cir. 1996).
2. Mellon Bank Corp. v. First Union Real Estate Equity and Mortg. Investments, 750 F.Supp. 711 (W.D. Pa. 1990), aff'd, 951 F.2d 1399 (3d Cir. 1991).
3. United States v. Commonwealth of Pennsylvania, 902 F.Supp. 565 (W.D.Pa. 1995), aff'd, 96 F.3d 1436 (3d Cir. Aug. 22, 1996) (Table No. 95-3541).
4. Peerless Wall and Window Coverings, Inc. v. Synchronics, Inc., 85 F.Supp.2d 519 (W.D.Pa., Feb 25, 2000), aff'd, 234 F.3d 1263 (3d Cir. Sept. 28, 2000) (Table, No. 00-3316).
5. Clearfield Bank & Trust Co. v. Omega Financial Corp., 65 F.Supp.2d 325 (W.D.Pa. 1999).
6. Laurel Capital Group, Inc. v. BT Financial Corp., 45 F.Supp.2d 469 (W.D.Pa.1999).
7. Furniture Rentors of America, Inc. v. N.L.R.B., 36 F.3d 1240 (3d Cir. 1994).
8. Precision Printing Co., Inc. v. Unisource Worldwide, Inc., 993 F.Supp. 338 (W.D.Pa. 1998).
9. United States v. Fenton, 10 F.Supp. 2d 501 (W.D. Pa. 1998).
10. In re Westinghouse Securities Litigation, 832 F.Supp. 948 (W.D. Pa. 1993), aff'd in part, rev'd in part, 90 F.3d 696 (3d Cir. 1996).

## (2) REVERSALS:

## A. PUBLISHED REVERSALS

1. Washington Hospital v. White, 889 F.2d 1294 (3d Cir. 1989): Philadelphia Geriatric Center ("PGC") filed a motion in the district court to enforce a stipulation between various hospitals and the Pennsylvania Department of Public Welfare ("DPW") concerning Medicaid reimbursements. PGC also filed a motion for preliminary injunction. At issue was whether PGC owed DPW nearly \$1.9 million in Medicaid overpayments. *Id.* at 1298. I denied PGC's motions, holding that the clear language of the stipulation controlled. On appeal, the Third Circuit reversed, holding that the stipulation was "ambiguous." *Id.* at 1300. It, therefore, vacated the judgment of the district court and remanded for the district court to determine the intent of the parties, through extrinsic evidence, when they entered the stipulation. *Id.* at 1302.
2. Decatur Contracting v. Belin, Belin, & Naddeo, 898 F.2d 339 (3d Cir. 1990): A Chapter 7 trustee brought suit in bankruptcy court seeking to 1) avoid a judgment creditor's judicial lien on a money judgment obtained before bankruptcy, and 2) avoid several partial transfers of the same judgment. The bankruptcy court permitted the trustee to avoid the judicial lien but refused to let the trustee avoid the partial transfers. I affirmed the bankruptcy court. The Third Circuit reversed on both grounds, holding that the trustee could not avoid the judicial lien, but that he could avoid the partial transfers because they were not perfected under Pennsylvania law. The case was remanded to the bankruptcy court.
3. Schaffer v. Board of Public Education of Pittsburgh, 903 F.2d 243 (3d Cir. 1990): Plaintiff, a teacher, brought suit under Title VII, claiming that he was denied a one-year childrearing leave which was available to females but not males under the Collective Bargaining Agreement between the Union and the School Board. I denied plaintiff's motion for summary judgment and granted defendants'. *Id.* at 246. The Third Circuit affirmed the district court's denial of plaintiff's motion, reversed my grant of summary judgment for defendants, and remanded the case for a determination of whether the plaintiff was constructively discharged. *Id.* at 248-49. Additionally, the Third Circuit reversed my denial of the Union's motion to dismiss and ordered dismissal of the claim against the Union because it was time-barred. *Id.* at 251-53.
4. Bradley v. Pittsburgh Board of Education, 910 F.2d 1172 (3d Cir. 1990): Plaintiff, a teacher, moved for preliminary injunction to prevent defendant from banning Learnball, a teaching methodology that she employed in her classroom. I denied plaintiff's motion, but did not hold a hearing and did not issue findings of fact or conclusions of law. The Third Circuit reversed and remanded, instructing me to hold a hearing and make findings of fact and conclusions of law. *Id.* at 1179.

5. Huber v. Casablanca Industries, Inc., 916 F.2d 85 (3d Cir. 1990), overruled in part by Milwaukee Brewery Workers' Pension Plan v. Jos. Schlitz Brewing Co., 513 U.S. 414 (1995): This case involved a dispute regarding the calculation of withdrawal liability under the Multiemployer Pension Plan Amendments Act. I rendered an opinion on various questions on cross-motions for summary judgment. On appeal, the Third Circuit, affirmed in part, reversed in part, and modified in part the district court's opinion. First, it affirmed my order insofar as it 1) accepted the Arbitrator's calculation of assets, 2) ordered the use of an 8% amortization rate for withdrawal liability payments, 3) accepted the inclusion of the benefit increases, and 4) directed arbitration of the second assessment. *Id.* at 110. Second, it reversed the district court insofar as it 1) struck down regulations on interest for overpayments, 2) mandated inclusion of post-retirement death benefits in the liability calculations, 3) refused to accept the change in attribution method, and 4) directed payment of interim payments on the second assessment. *Id.* Finally, it 1) modified my calculation of pre-demand interest, overruled by Milwaukee Brewery Workers' Pension Plan v. Jos. Schlitz Brewing Co., 513 U.S. 414 (1995), and 2) it upheld the Arbitrator's order striking the employer's motion to add new information.

6. Colgan v. Fisher Scientific Co., 935 F.2d 1407 (3d Cir. 1991): Plaintiff sued his former employer under the ADEA, alleging that he was terminated on account of his age. I granted defendant's motion for summary judgment on the ground that plaintiff's charge filed with the EEOC was untimely. In the alternative, I held that there was no genuine issue of material fact to undermine defendant's nondiscriminatory reason for firing plaintiff. The Third Circuit reversed, holding that plaintiff's charge was not untimely and that there was a genuine issue of fact precluding summary judgment.

7. Hughes v. Consolidated Pennsylvania Coal Co., 945 F.2d 594 (3d Cir. 1991): Plaintiffs were landowners who brought a lawsuit against railroad and coal company alleging fraud in connection with the purchase of the plaintiff's property. I entered judgment for the plaintiffs after a second trial, in a case transferred to me from another judge. The Third Circuit affirmed in part and reversed in part. In particular, the Third Circuit held that the district court (Teitelbaum, J.) erred in setting aside the jury's award of damages following the first trial, and that it erred in dismissing plaintiff's claim for legal malpractice. It also held that I erred in awarding delay damages. In all other respects, the judgment of the district court was affirmed.

8. Ellison v. Shenango Inc. Pension Fund, 956 F.2d 1268 (3d Cir. 1992): Plaintiff brought suit to recover pension benefits under ERISA. I awarded the benefits, but denied the plaintiff's request for attorney's fees. The Third Circuit affirmed the district court's award of benefits, but reversed its decision to deny attorney's fees.

9. Bridge v. United States Parole Commission, 981 F.2d 97 (3d Cir. 1992): Inmate petitioned for a writ of habeas corpus following the defendant's calculation of petitioner's parole eligibility date based partly on a finding that petitioner had committed a bombing, a charge to which he had not pled guilty. In an earlier proceeding, I vacated petitioner's

parole date because the defendant failed to provide a rational basis for its conclusion that petitioner participated in the bombing. After gathering additional evidence, defendant again concluded that petitioner was responsible for the bombing and set his parole date accordingly. Once again, I vacated this finding, holding that its prior ruling barred the introduction of new evidence and defendant waived its right to challenge that earlier decision. On appeal, the Third Circuit reversed, holding that the district court erred by barring defendant from reconsidering new evidence linking petitioner to the bombing.

10. Loughman v. Consolidated Pennsylvania Coal Co., 6 F.3d 88 (3d Cir. 1993): This is the second time this case went before the Court of Appeals. See Hughes v. Consolidated-Pennsylvania Coal Co., 945 F.2d 594 (3d Cir. 1991). This time, the parties raised the following issues on appeal of the district court's (Smith, J.) ruling: 1) does post-judgment interest run from original judgment or date appeals court reinstated that judgment?; 2) should individual punitive damage awards be imposed jointly and severally?; and 3) does the jury's verdict, which found that 100% of plaintiff Loughman's compensatory damages were due to malpractice, mandate that the damages awarded be entered solely against the lawyers, even though other defendants were found liable of conspiracy? The Third Circuit affirmed the district court's decision on questions 1 and 2 and reversed on question 3.

11. United States v. Retos, 25 F.3d 1220 (3d Cir. 1994): Defendant Retos was convicted on nine counts of an eleven count indictment, including two counts of tax evasion and one count of currency structuring. On appeal, Retos raised numerous arguments, including a claim that my jury instruction on the structuring count was inconsistent with Ratzlaf v. United States, 510 U.S. 135 (1994), a case decided while Retos' case was on appeal. Although no objection was given to the jury instruction at trial, the Third Circuit reversed in light of Ratzlaf and remanded the case for a new trial on the structuring count.

12. Metzgar v. Playskool, Inc., 30 F.3d 459 (3d Cir. 1994): Parents of a child who choked to death on a toy building block sued manufacturer and retailer for negligence and strict products liability. Defendants filed a motion for summary judgment, which I granted, holding that the child was not an intended user of the product and that the defendants were not required to warn of the risk of choking because it was obvious. The Third Circuit reversed and remanded, reinstating all of plaintiffs' claims.

13. Brown v. Borough of Mahaffey, 35 F.3d 846 (3d Cir. 1994): Plaintiffs filed suit under 42 U.S.C. § 1983, alleging that defendants violated their free exercise rights by intentionally impeding access to their tent revival meetings. I granted defendants' motion for summary judgment on all counts. On appeal, the Third Circuit affirmed in part and reversed in part. In particular, the Court reversed the district court's grant of summary judgment on the free exercise claim, holding that the key inquiry under the free exercise clause is not whether defendants have placed a "substantial burden" on plaintiffs' religious exercise, as I had held, but whether the defendants intended to impose such a burden. Id. at 847, 850.

14. Ackerman v. Warnaco, Inc., 55 F.3d 117 (3d Cir. 1995): Plaintiffs sued their former employer under ERISA seeking a termination allowance under an employee benefit plan that had been rescinded. On cross-motions for summary judgment, I granted defendant's motion and denied plaintiffs's. On appeal, the Third Circuit reversed, holding that the district court erred by concluding that complete rescission of a welfare plan does not implicate the amendment procedures of ERISA. The Court also reversed and remanded for consideration of Supreme Court precedent decided while the case was pending on appeal. *Id.* at 119.

15. Chambers Development Co. v. Passaic County Utilities Authority, 62 F.3d 582 (3d Cir. 1995): Plaintiff filed an action against defendant asserting breach of a long term solid waste disposal contract and seeking damages. Plaintiff moved for summary judgment and I adopted the Report and Recommendation of the magistrate judge to deny the motion and enter summary judgment for defendant. On appeal, the Third Circuit reversed, holding that 1) the district court lacked the authority to grant summary judgment for the defendant without first giving notice to the plaintiff; and 2) genuine issues of fact existed, precluding summary judgment and requiring an evidentiary hearing.

16. United States v. \$184,505.01 in U.S. Currency, 72 F.3d 1160 (3d Cir. 1995): The United States brought three separate civil in rem forfeiture proceedings against Reginald McGlory. Default judgment was entered against McGlory. McGlory filed motions to set aside default judgments. I adopted the Report and Recommendation of the magistrate judge to deny McGlory's motions. *Id.* at 1163. The Court of Appeals reversed the district court's decision in the first and second forfeiture proceedings and affirmed its judgment in the third. In particular, as to the first and second forfeiture proceedings, the Court held that the government violated McGlory's due process rights when it served him at an address where the items were seized instead of in prison, where it knew he was incarcerated.

17. United States v. Brannan, 74 F.3d 448 (3d Cir. 1996): Defendant pled guilty before me and I sentenced him. On appeal, defendant raised two arguments: 1) that the district court improperly enhanced his sentence; and 2) that the district court failed to properly apply § 5G1.3 of the USSG so as to have his federal sentence run concurrently with a state court sentence he was serving. The Third Circuit reversed, accepting the defendant's second argument and holding that the district court had the power to depart from the USSG in this case.

18. In re Westinghouse Securities Litigation, 90 F.3d 696 (3d Cir. 1996): Plaintiffs brought a securities action alleging misstatements and omissions in connection with a stock offering by defendants. I dismissed all of plaintiffs' claims. On appeal, the Third Circuit affirmed in part and reversed in part, reinstating a number of plaintiffs' claims.

19. Urrutia v. Harrisburg County Police Department, 91 F.3d 451 (3d Cir. 1996): Plaintiff filed a complaint under 42 U.S.C. § 1983, alleging that he sustained injuries when he was in

custody of the police. I adopted the Report and Recommendation of the magistrate judge and dismissed plaintiff's complaint as legally frivolous under 28 U.S.C. § 1915(d) and denied him the opportunity to amend his complaint to correct the defects. On appeal, the Third Circuit reversed, holding that plaintiff should have an opportunity to amend his complaint to add individual police officers and such amendment would relate back to the date of the filing of the original complaint.

20. Gibbs v. Roman, 116 F.3d 83 (3d Cir. 1997), overruled by Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001) (en banc): Plaintiff brought an action under 42 U.S.C. § 1983 alleging that prison librarian violated his constitutional rights when she permitted inmate-law clerk to read his legal papers, reflecting information that he was a government informant. I adopted the Report and Recommendation of the magistrate judge and rejected Gibbs' motion to proceed in forma pauperis, holding that he was barred by the "three strikes rule" because he had filed three frivolous lawsuits and was not in "imminent danger of serious physical injury." *Id.* at 85. The Third Circuit reversed, holding that the plaintiff's complaint alleging imminent danger must be read as having satisfied the threshold criterion of the three strikes rule. The Court also held that imminent danger should be measured from the time of the alleged incident, not at the time the complaint is filed. The Third Circuit overruled Gibbs in Abdul-Akbar v. McKelvie, 239 F.3d 307 (3d Cir. 2001) (en banc).

21. Hess v. Mazurkiewicz, 135 F.3d 905 (3d Cir. 1998): Petitioner filed a petition for habeas corpus that I denied. On appeal, the Third Circuit affirmed in part and vacated and remanded in part. The Court held that the district court did not err when it ruled that petitioner's counsel was not ineffective for failing to call witnesses at trial. Nonetheless, the Court remanded for a determination of petitioner's claim that his counsel had a conflict of interest that was not presented to the state courts.

22. Wicker v. Consolidated Rail Corporation, 142 F.3d 690 (3d Cir. 1998): Plaintiffs brought claims against their former employer under FELA for injuries allegedly sustained through exposure to toxic chemicals. I granted defendant's motion for summary judgment, holding that plaintiffs' claims were barred under releases signed by them. On appeal, the Third Circuit reversed, holding that the releases in question were invalid under § 5 of FELA and, therefore, did not bar the plaintiffs' claims.

23. In re Chambers Development Co., 148 F.3d 214 (3d Cir. 1998): On remand from the Third Circuit's earlier decision in this matter, 62 F.3d 582 (3d Cir. 1995), I adopted the Report and Recommendation of the magistrate judge and granted summary judgment for the defendant on count one of plaintiff's amended complaint. The plaintiff then petitioned for a writ of mandamus in the Third Circuit and that writ was granted. The Third Circuit held that the district court committed error when it granted defendant's motion for summary judgment on count one. In particular, the Third Circuit noted that the district court's opinion was inconsistent with the remand in the prior case.

24. Gibbs v. Ryan, 160 F.3d 160 (3d Cir. 1998): Gibbs brought an action under 42 U.S.C. § 1983 alleging that prison physician denied him medical treatment. I adopted the Report and Recommendation of the magistrate judge and dismissed Gibbs' complaint under 28 U.S.C. § 1915(g), the "three strikes" rule of the Prison Litigation Reform Act ("PLRA"). On appeal, the Third Circuit reversed holding that the "three strikes" rule did not apply to Gibbs' case because Gibbs had filed his action prior to the enactment of the PLRA.

25. Gibbs v. Cross, 160 F.3d 962 (3d Cir. 1998): Gibbs brought an action under 42 U.S.C. § 1983 alleging that prison maintenance supervisor was causing him to be subject to dangerous conditions. In particular, Gibbs claimed that "dust, lint and shower odor" were continuously emitted from his cell vent, causing him to suffer "severe headaches. . . and watery eyes." *Id.* at 964. I adopted the Report and Recommendation of the magistrate judge and dismissed Gibbs' complaint under 28 U.S.C. § 1915(g), the "three strikes" rule of the PLRA. On appeal, the Third Circuit reversed, holding that Gibbs' allegations constituted "imminent danger of serious physical injury," an exception to the "three strikes" rule.

26. United States v. McGuire, 178 F.3d 203 (3d Cir. 1999): McGuire was convicted of aiding and abetting the use of an explosive to destroy property used in an activity affecting commerce in violation of 18 U.S.C. §§ 2 and 844(I). I held that the government had submitted sufficient evidence to support the jurisdictional element of the crime (the interstate commerce element). On appeal, the Third Circuit reversed, holding that the evidence offered at trial was insufficient to prove the jurisdictional element of the crime.

27. Tourscher v. McCullough, 184 F.3d 236 (3d Cir. 1999): Plaintiff brought two complaints against defendants alleging that his constitutional rights were violated because defendants forced him to work in the prison cafeteria when he was in fact a pretrial detainee and again when he was preparing his appeal of his state court conviction. He also asked for compensation under the Fair Labor Standards Act. I dismissed both complaints. On appeal, the Third Circuit affirmed in part and vacated and remanded in part the district court's decision. In particular, the Third Circuit vacated the dismissal of that portion of plaintiff's first complaint that alleged that he was compelled to work between September 4, 1997 and September 18, 1997. In all other respects, the district court's opinion was affirmed.

28. Pennsylvania Mines Corporation v. Holland, 197 F.3d 114 (3d Cir. 1999): In a case brought under the Coal Act, 26 U.S.C. §§ 9701-22, I held that Pennsylvania Mines Corporation ("PMC") was responsible for providing health benefits for certain of its former employees. On appeal, the Third Circuit affirmed. Nevertheless, I had denied a request for permanent injunctive relief by one of the defendants. On appeal, PMC conceded that such relief was proper. Accordingly, the Third Circuit reversed and remanded on that narrow issue.



29. United States v. McGlory, 202 F.3d 664 (3d Cir. 2000): The United States brought forfeiture proceedings against McGlory, a federal prisoner, and provided him with notice of these proceedings by sending it by certified mail, addressed to McGlory, to the United States Marshal's Office. The Marshal's Office was then charged with forwarding the notice to McGlory. I adopted the Report and Recommendation of the magistrate judge and held that McGlory had received sufficient notice of the proceedings against him. On appeal, the Third Circuit, sitting *en banc*, reversed, holding that mailing notice to Marshal's Office, rather than to McGlory personally, violated due process. "[A]t a minimum, due process requires that when a person is in the government's custody and detained at a place of its choosing, notice of a pending administrative forfeiture proceeding must be mailed to the detainee at his or her place of confinement." *Id.* at 674.

30. United States v. One Toshiba Color Television, 213 F.3d 147 (3d Cir. 2000): This case also involved two forfeiture proceedings against Reginald McGlory and presented two issues. First, it presented the question of whether the government satisfies due process when it mails the notice to the prison where McGlory was detained or whether "more" was required. *Id.* at 149. I adopted the Report and Recommendation of the magistrate judge and held that McGlory had received sufficient notice of the proceedings against him. Adopting a general standard for notice to prisoners under the due process clause, the Third Circuit vacated the district court's judgment and remanded for further proceedings. In particular, the Third Circuit, sitting *en banc*, held that when the government relies on direct mail to provide notice to federal prisoners, "it bears the burden of demonstrating that procedures at the receiving facility were reasonably calculated to deliver the notice to the intended recipient." *Id.* at 150. Second, the case presented the question of whether McGlory was barred in a second proceeding from recovering certain property by the doctrine of laches. I again adopted the Report and Recommendation of the Magistrate Judge and held that McGlory was barred by the doctrine of laches. Again, the Third Circuit reversed, holding that the government could not assert laches.

31. Westmoreland Human Opportunities v. Walsh, 246 F.3d 233 (3d Cir. 2001): A Chapter 11 trustee in bankruptcy brought an adversary proceeding against a member of an unsecured creditors committee, Westmoreland Human Opportunities ("WHO"), alleging that WHO breached its fiduciary duty to the committee by assuming the debtor's position as recipient of federal grant without notifying either the bankruptcy court or other committee members. The issue in the case was whether the federal grant was "property of the estate" as that term is used in 11 U.S.C. § 541. The bankruptcy court held that the federal grant was property of the estate, and I affirmed. On appeal, the Third Circuit reversed, holding that the federal grant was excluded from the definition of "property of the estate" under the Bankruptcy Code.

32. Taylor Milk v. International Brotherhood of Teamsters, AFL-CIO, 248 F.3d 239 (3d Cir. 2001): Plaintiff sued defendants, alleging that they engaged in unfair labor practices in violation of 29 U.S.C. § 187. In particular, plaintiff alleged that defendants violated the prohibition against secondary boycotts by coercing a neutral party into not doing business

with plaintiff. I found that defendants had committed such an unfair labor practice and awarded plaintiff \$50,000 in damages. On appeal, the Third Circuit reversed and remanded. Although it affirmed the district court's determination of liability, albeit on different grounds, the Court reversed my damages decision.

33. Zucker v. Westinghouse Elec. Corp., C.A. No. 99-596, reversed, \_\_\_ F.3d \_\_\_, 2001 WL 1044602 (3d Cir. Sept. 10, 2001): I awarded attorneys fees to plaintiffs' counsel in a shareholders derivative action which settled at the same time as a pending securities class action (see In re: Westinghouse Securities Litigation at 18. above). A shareholder appealed, objecting to both counsel's entitlement to the award and its amount. The Third Circuit reversed, concluding that attorneys' fees were not warranted because the derivative action did not confer a benefit upon the corporation.

#### B. UNPUBLISHED REVERSALS

1. Garner v. City of Pittsburgh Chemical Mortgage Co., Civil Action No. 89-3642 (3d Cir. 1990): Plaintiff sued defendant under 42 U.S.C. § 1983 alleging that the city demolished a building owned by plaintiff without notifying her in accordance with a City ordinance. I dismissed plaintiff's complaint, holding that it lacked subject matter jurisdiction over the lawsuit. On appeal, the Third Circuit reversed, holding that, while the plaintiff's complaint was lacking, the district court erred in dismissing the complaint without giving plaintiff an opportunity to amend her complaint.

2. Childs v. Norris, Civil Action No. 90-3014 (3d Cir. 1990): Childs filed a pro se action in the district court and a motion to proceed *in forma pauperis*. I denied Childs' motion to proceed in forma pauperis and ordered him to remit the \$120 filing fee within twenty days. On appeal, the Third Circuit reversed, holding that Childs did not have enough money in his prison account at the time he filed the action to pay the district court filing fee.

3. Lewis v. Norris, Civil Action No. 90-3749 (3d Cir. 1990): Plaintiff, a prisoner, filed an action under 42 U.S.C. § 1983, alleging that his constitutional rights were violated during a disciplinary hearing held at the prison. I dismissed plaintiff's complaint for failure to exhaust administrative remedies. On appeal, the Third Circuit reversed, holding that a state prisoner need not exhaust administrative remedies when challenging prison procedures on constitutional grounds.

4. United States v. Rhone, Civil Action No. 92-3530 (3d Cir. 1993): Rhone pled guilty to a two-count indictment charging him with federal firearms violations and I sentenced him to a ten-month prison term to be followed by three years of supervised release. On appeal, the Third Circuit vacated the sentence, holding that the district court had the authority to take Rhone's psychiatric history into account and depart downward if it chose to do so. The case was remanded so that I could clarify and explain my decision to sentence Rhone and decide whether a resentencing was necessary.

5. Aloe v. Gerlach, Civil Action No. 93-3248 (3d Cir. 1994): Plaintiff sued under 42 U.S.C. § 1983 alleging violations of various constitutional rights, including the 4<sup>th</sup> and 14<sup>th</sup> Amendments. Defendant Gerlach moved for summary judgment, claiming that he was entitled to qualified immunity. I disagreed and, although I granted summary judgment on a number of claims, I denied Gerlach's claim of qualified immunity. On appeal, the Third Circuit reversed, holding that Gerlach was entitled to qualified immunity.
  
6. Hanley v. Maddox, Civil Action No. 93-3351 (3d Cir. 1994): Hanley, a prisoner, filed a claim under 42 U.S.C. § 1983, alleging various constitutional violations. I dismissed Hanley's complaint as frivolous under 28 U.S.C. § 1915(d). On appeal, the Third Circuit reversed, holding that the complaint had an arguable basis in the facts and the law.
  
7. Dolenc v. Zwierzyna, Civil Action No. 96-3034 (3d Cir. 1997): Plaintiff, a prisoner, brought an 8<sup>th</sup> Amendment claim, alleging that prison officials were deliberately indifferent to his serious medical needs. I adopted the Report and Recommendation of the magistrate judge and dismissed plaintiff's claim as frivolous under 28 U.S.C. § 1915(d). On appeal, the Third Circuit reversed holding that plaintiff had pled sufficient facts to make out an 8<sup>th</sup> Amendment claim.
  
8. Walsh v. Benjamin, Civil Action No. 97-3157 (3d Cir. 1998): Trustee in bankruptcy appealed Bankruptcy Court's determination that fiduciary-creditor with an oversecured claim had not engaged in claims trading and was entitled to accrued interest. I reversed the bankruptcy court finding that per se rule prohibiting fiduciaries from receiving any amount besides initial investment precluded fiduciary-creditors from receiving interest. On appeal, the Third Circuit reversed, holding that the claims trading rule does not preclude recovering interest accrued on a proper claim while held in escrow for a significant period of time.
  
9. Singer v. Conrail, C.A. No. 96-252J, reversed, 141 F.3d 1154 (Table)(3d Cir. Jan. 29, 1998): At trial, I dismissed plaintiff's claim under the Federal Employers' Liability Act, pursuant to Fed.R.Civ.P. 50(a)(1) after plaintiff had rested. On appeal, the Third Circuit reversed, concluding that sufficient evidence of negligence had been adduced to warrant submitting the case to the jury.
  
10. Taylor v. Callahan, C.A. No. 96-296J, reversed, 156 F.3d 1225 (Table)(3d Cir. May 14, 1998): After I affirmed the final decision of the Commissioner of Social Security, the Third Circuit reversed concluding that substantial evidence did not support the Commissioner's final decision denying benefits and instructed that the case should be remanded for the development of vocational evidence.
  
11. McCargo v. Guelich, C.A. 97-218J, vacated, 173 F.3d 421 (Table)(3d Cir. December 30, 1998): Po se prisoner filed a civil rights complaint alleging that his constitutional rights were violated when a corrections officer charged him with misconduct after he utilized the prison grievance system. I adopted magistrate judge's recommendation dismissing

complaint because the alleged deprivation did not implicate the due process clause. On appeal, Third Circuit reversed and remanded, holding that the district court had not considered prisoner's First Amendment claim.

12. Sickler v. Franco, C.A. No. 96-62J, vacated and remanded, 164 F.3d 621 (Table)(3d Cir. Aug. 27, 1998): Pro se prisoner filed civil rights complaint on habeas corpus form and paid the \$5 filing fee. Thereafter, plaintiff failed to effect service or request service at government's expense. Magistrate judge recommended dismissal of the action under Fed.R.Civ.P. 4(m), and I adopted the Report and Recommendation. On appeal, Third Circuit vacated dismissal and remanded for determination of whether in forma pauperis status should be granted for the purpose of having the court direct service of complaint at government's expense.

13. Cole v. Frank et al., Civil Action No. 98-3221 (3d Cir. 1999): Cole, a Muslim inmate, filed an action under 42 U.S.C. § 1983, claiming that prison officials violated his First Amendment right to freely exercise his religion by requiring him to shave his beard and shower naked. He also raised an equal protection claim, alleging that Native Americans and Rastafarians were permitted to wear long hair and beard. I adopted the Report and Recommendation of the magistrate judge and dismissed plaintiff's complaint for failure to state a claim. On appeal, the Third Circuit reversed, holding that Cole had stated a claim under both the First Amendment and the equal protection clause.

14. Dolenc v. Department of Corrections, C.A. No. 95-149J, vacated, 178 F.3d 1278 (Table)(3d Cir. March 16, 1999): Pro se prisoner filed civil rights suit and obtained leave to proceed in forma pauperis. After passage of the Prison Litigation Reform Act ("PLRA"), I adopted magistrate judge's recommendation that in forma pauperis status be revoked. On appeal, Third Circuit reversed and held that the PLRA's limitations on proceeding in forma pauperis cannot be applied retroactively to revoke indigency status.

15. First Mercury Syndicate, Inc. v. Township of Buffalo, C.A. No. 96-261, reversed, 182 F.3d 903 (Table)(3d Cir. May 28, 1999): I held that an insurer had a duty to defend township in a civil rights suit. On appeal, Third Circuit reversed, concluding that there was no duty under the policy to defend civil rights claims premised on property rights violations subject to other exclusions.

16. Jones v. Horn, C.A. No. 97-186J, reversed, 166 F.3d 1205 (Table)(3d Cir. Sept. 24, 1999): Pro se prisoner's complaint alleged that his First, Eighth and Fourteenth Amendment rights were violated when he was transferred from the Drug and Alcohol Therapeutic Community block of the prison following the filing of a grievance that his legal mail was being opened. I adopted the magistrate judge's Report and Recommendation recommending dismissal of plaintiff's claims alleging a First Amendment deprivation of his right of access to the courts, an Eighth Amendment cruel and unusual punishment claim, and a due process claim. The Third Circuit agreed that plaintiff had failed to state a claim under the Eighth and Fourteenth Amendments. It reversed the district court's dismissal of

plaintiff's First Amendment claim, construing it as a claim of retaliation for use of an internal grievance.

17. Gemaz, Inc. v. Aetna Casualty, C.A. No. 97-191J, reversed, 242 F.3d 370 (Table)(Oct. 6, 2000): I granted summary judgment for defendant insurer, concluding that plaintiff super market could not show that perishables, destroyed during a flood, were spoiled "solely" because of an "accident" as required by the insurance policy endorsement. The Third Circuit reversed, concluding that there was evidence which could support a jury finding that spoilage of the perishables was solely attributable to an accident, i.e., the breakdown of refrigeration equipment when flood waters ruined fans and switches.

18. Welch v. Apfel, C.A. No. 99-210J, reversed, (3d Cir. July 20, 2001): I remanded plaintiff's Social Security appeal for a more thorough assessment of whether plaintiff was disabled for a closed period of time. The Third Circuit concluded that district court erred in limiting remand to whether plaintiff was disabled for only closed period inasmuch as disability before the date he was last insured would have entitled plaintiff to an award of disability without a temporal limitation.

#### C. AFFIRMED WITH SIGNIFICANT CRITICISM OF DISTRICT COURT RULING

NONE

#### (3) SIGNIFICANT OPINIONS ON FEDERAL OR STATE CONSTITUTIONAL ISSUES:

1. Sherry v. Associates Commercial Corp., 60 F.Supp.2d 470 (W.D.Pa. 1998), aff'd, 191 F.3d 445 (3d Cir. Aug. 4, 1999) (Table No. 98-3603).
2. McClintock v. Eichelberger, 1998 WL 552656 (W.D.Pa. 1998), aff'd, 169 F.3d 812 (3d Cir. 1999).
3. Unity Real Estate Co. v. Hudson, 977 F.Supp. 717 (W.D.Pa. 1997), aff'd, 178 F.3d 649 (3d Cir. 1999).
4. United States v. Commonwealth of Pennsylvania, 902 F.Supp. 565 (W.D.Pa. 1995), aff'd, 96 F.3d 1436 (3d Cir. Aug. 22, 1996) (Table No. 95-3541).
5. Unity Real Estate Co. v. Hudson, 889 F.Supp. 818 (W.D.Pa. 1995), vacated by, 977 F.Supp. 717 (W.D.Pa. 1997).
6. Roseman v. County of Cambria, 861 F.Supp. 19 (W.D.Pa. 1993).
7. Quirin v. City of Pittsburgh, 801 F.Supp. 1486 (W.D.Pa. 1992).

8. Grassinger v. Welty, 818 F.Supp. 862 (W.D.Pa. 1992), aff'd, 993 F.2d 224 (3d Cir. Mar. 4, 1993) (Table No. 92-3419).

9. Murray v. Pittsburgh Board of Education, 759 F.Supp. 1178 (W.D.Pa. 1991).

10. Doe v. Sparks, 733 F.Supp. 227 (W.D.Pa. 1990).

11. Anderson v. Everett Area School Board, 732 F.Supp. 39 (W.D.Pa. 1989).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1977-79 Assistant District Attorney of Blair County  
(Appointed)

1981-83 Special Assistant District Attorney (appointed)

1983-84 District Attorney of Blair County (appointed by  
Board of Judges to fill a vacancy)

I have never been an unsuccessful candidate for elective office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve a judicial clerkship.

2. whether you practiced alone, and if so, the addresses and dates;

I have never been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you

have been connected, and the nature of your connection with each;

I began an association with the law firm of Jubelirer, Carothers, Krier and Halpern, Central Trust Building, Altoona, PA, several weeks after sitting for the Pennsylvania Bar Examination at the end of July, 1976. I served as an associate attorney with that firm until January 1, 1980, at which time I was admitted to a new partnership, under the name of Jubelirer, Carothers, Krier, Halpern & Smith. From May, 1977 until December 31, 1979, I served concurrently as a part-time assistant district attorney of Blair County, with an office in Annex #1, Blair County Courthouse, Hollidaysburg, PA. While still a partner in my law firm, I served as a part-time special assistant district attorney of Blair County assigned to an investigating grand jury from October, 1981 until October, 1983.

In June, 1982, my law firm moved its offices to 309 East Plank Road, Altoona PA. My private law office remained at that location until my appointment to the bench of the Court of Common Pleas of Blair County on December 21, 1984.

On December 30, 1983, I was appointed by the Board of Judges of Blair County to fill a vacancy in the office of District Attorney of Blair County. I held that office, a part-time position, until December 10, 1984, when I resigned due to my impending swearing-in as a judge of the Court of Common Pleas.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Because of my prosecutorial function throughout most of my years of practice, a significant percentage of my work was on criminal cases. My private practice consisted of general trial work, including negligence, commercial, divorce and child custody litigation. Between 1980 and 1984, my private practice included considerable municipal work. Although I handled real estate transactions and decedent's estates throughout the years of my practice, they constituted only a small portion of my practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My client mix was an interesting amalgam of individuals and corporations. I represented hundreds of individuals in matters which may, to the legal observer, seem minor or routine, but which to the client were important and sometimes grave. I represented tenants who sought to recover security deposits, and abused spouses who sought protective relief. I handled numerous child custody cases and divorces. I acted as solicitor for a city planning commission, a city housing authority, a regional sewer authority and an emergency medical authority. I represented the interests of the Commonwealth of Pennsylvania's Occupational Disease Fund in a multi-county area. I represented a major automobile manufacturer in warranty claims, and its separate corporate credit arm in collection matters. I also had several small corporate and business clients.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently, often on a



daily basis. Although my court appearances were less frequent during the early 1980's due to my on-going work as a grand jury prosecutor, I still appeared on at least a weekly basis in various court and adversarial proceedings.

2. What percentage of these appearances was in:  
 (a) federal courts;

Less than 5%

- (b) state courts of record;

Approximately 75%

- (c) other courts.

Approximately 20% (master's, arbitration and administrative proceedings)

3. What percentage of your litigation was:  
 (a) civil

Approximately 50%

- (b) criminal.

Approximately 50%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that the number of cases I tried to verdict as sole counsel, including both jury and non-jury trials, was close to 100.

5. What percentage of these trials was:  
 (a) jury;

Approximately 33 1/3%

- (b) non-jury.

Approximately 66 2/3%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Commonwealth v. Eshelman, 477 Pa. 93, 383 A.2d 838 (1978)

Defendant was convicted of possession of a controlled substance with intent to deliver following a non-jury trial. The trial court refused to suppress a quantity of marijuana which had been seized by an off-duty auxiliary policeman who had walked behind the home of defendant's grandmother while looking for a friend. The off-duty officer noticed an old car which contained a number of thin rolls tied with string, and he became suspicious. After extracting one of the rolls, he took it to the police station where State Police were then called in. The contents were tested and determined to be marijuana, after which a warrant was obtained to search the old car.

The Supreme Court of Pennsylvania reversed, concluding that the off-duty officer's conduct was inconsistent with the theory that he was a mere private citizen. This case has been frequently cited by Pennsylvania courts in addressing certain search and seizure issues.

I argued this case for the Commonwealth before the Pennsylvania Supreme Court. The brief, however, was written by another assistant district attorney, and I was not trial counsel.

Counsel for the defendant, both at trial and at appellate argument, was Thomas M. Reese, Esq., whose

office is located at 85 Logan Boulevard, Altoona, Pennsylvania, 16602 (814-944-6111).

2. Natalie Brothers Towing Service, Inc. v. Murray Ford and Ford Motor Co.,  
41 D.&C.3d 224 (1984); C.P. of Clearfield County No. 79-3379-Plaintiff sued both vehicle manufacturer and dealer alleging various defects in a truck, plaintiff contending breach of certain warranties. Trial by jury commenced on April 23, 1984, and defendants moved for non-suit at the conclusion of plaintiff's case. Those motions were granted after defendants argued the evidence would not support a proper measure of damages.

I was sole counsel for defendant Ford Motor Co. from the point suit was initiated, throughout discovery and during trial. The matter was tried in the Court of Common Pleas of Clearfield County before the Honorable John K. Reilly, Jr.

Counsel for the plaintiff was James N. Bryant, Esq., 116 W. Main Street, Millheim, Pennsylvania, 16854 (814-349-5666), and counsel for defendant Murray Ford was Anthony S. Guido, Esq. (814-371-7768).

3. Commonwealth v. John F. Maras, D.O., C.A. 218-233 of 1979 Blair County-A physician was tried and convicted for illegally prescribing and dispensing controlled substances. This was one of the first prosecutions of a physician in Central Pennsylvania for violating the Drug, Device and Cosmetic Act. This prosecution gained added significance when the defendant, while serving his prison sentence, cooperated with an investigative grand jury probe in prosecuting a corrupt organization which had been identified by the Pennsylvania Crime Commission as part of the LaRocca crime family of Pittsburgh.

I represented the Commonwealth from the initial stages of the investigation, through trial and post-verdict motions. The case was tried before the Honorable John A. Cherry, Specially Presiding, in the Court of Common

Pleas of Blair County, from January 29, 1980 to February 8, 1980.

The defendant was represented at trial by Harold E. Miller, Esq., Mellon Bank Building, Altoona, Pennsylvania, 16601 (814-943-1462) and by R. Thomas Forr, Esq., 2229 Broad Avenue, Altoona, Pennsylvania, 16602 (814-946-4316).

4. Commonwealth v. Ardean Miller, C.A. 127 & 237 of 1981-The defendant was charged with Criminal Homicide and related offenses following the delivery of the body of his girlfriend to the emergency room of a local hospital. She had been shot through the head with defendant's pistol which police located shortly thereafter on the dashboard of his car. The prosecution's case was entirely circumstantial. The jury returned a verdict of guilty of involuntary manslaughter.

Trial lasted from March 15, 1982 through March 19, 1982, before the Honorable Thomas G. Peoples, Jr., President Judge of the Court of Common Pleas of Blair County. I represented the Commonwealth as sole trial counsel, and also argued the matter before Superior Court. Sentence was modified by that Court at No. 01113 Pittsburgh, 1982.

The defendant was represented at trial by Harold E. Miller, Esq., Mellon Bank Building, Altoona, Pennsylvania, 16601 (814-943-1462), and on appeal by John Woodcock, Jr., Public Defender, Blair County Courthouse, Highland Hall Annex, Hollidaysburg, PA (814-695-5541).

5. Commonwealth v. Robert John Sweitzer, C.A. 685 of 1975-Defendant was prosecuted for Aggravated Assault and related offenses arising out of the escape of defendant and two others from the custody of two deputy sheriffs during transport to a state correctional institution. During the course of the events, one deputy was shot and seriously wounded. After the grant of habeas

corpus relief by U. S. District Court, the matter was remanded for a new trial.

This case was re-tried December 1, 1980 through December 5, 1980 before the Honorable R. Bruce Brumbaugh. Since the first trial, the victim of the shooting had died (of natural causes) and it became necessary to present certain evidence by way of prior recorded testimony. The defendant was re-convicted on all counts.

I was sole counsel for the Commonwealth during the retrial through conviction and post-verdict motions. The defendant was represented by Norman D. Callan, Esq., Assistant Public Defender, Highland Hall Annex, Blair County Courthouse, Hollidaysburg, PA, 16648 (814-695-5541).

6. Commonwealth v. Vincent D. Caracciolo, C.A. 234 of 1982-This was a prosecution for intimidation of witnesses. The defendant was the alleged "enforcer" of a local organized crime family, charged with threatening a subpoenaed grand jury witness. The witness was wearing an electronic device at the time of the offense and therefore the entire conversation was intercepted and recorded by police and prosecutors.

This case was significant in several ways. It was the first prosecution in this part of Pennsylvania to utilize consensual interception of conversations as evidence in a criminal trial pursuant to the Wiretapping and Electronic Surveillance Act. Further, it led to an agreement between the defendant and the Commonwealth to testify against other members of a corrupt organization targeted in a grand jury probe, including John M. Verilla, identified by the Pennsylvania Crime Commission as a "soldier" in the LaRocca crime family.

Although the trial commenced on March 24, 1983, it terminated in the early stages because of the defendant's agreement to cooperate with the prosecution. I personally handled this case from the investigative stages, through preliminary hearing and

the commencement of trial. The trial judge was the Honorable R. Bruce Brumbaugh. Defense counsel prior to trial was Harold E. Miller, Esq., Mellon Bank Bldg., Altoona, PA (814-943-1462), and at trial, John L. Doherty, Esq., 436 7<sup>th</sup> Avenue, Suite 1550, Pittsburgh, PA (412-471-8893).

7. In re Condemnation of Premises of Dean Garber, No. 595 C.P. 1980--This was an eminent domain proceeding wherein the Northern Blair County Regional Sewer Authority condemned a right-of-way for sewer construction and maintenance across Garber's property. Although this was neither an unusual nor a complex condemnation case, its result was unique to my experience in that a jury returned a verdict for the condemnor, awarding nothing-- not even nominal damages-- to condemnee for the taking.

Trial took place May 3 and May 4, 1982, before the Honorable Thomas G. Peoples, Jr., P.J. As solicitor for the Authority, I acted as sole trial counsel. The condemnee was represented by Frederick B. Gieg, Jr., Esq., 401 N. Logan Blvd., Altoona, PA (814-946-1606).

8. Suzanne H. Egan v. Robert F. Egan, No. 1063 C.P. 1981--This was an action in divorce. The significance of this case was that the defendant was a physician, and no Pennsylvania appellate authority was yet extant on the issue of whether a license to practice medicine constituted marital property under the Divorce Code of 1980, nor were guidelines yet established on the valuation of a medical practice.

Hearing was held on December 9, 1982, before a Master, Edward S. Newlin. The record was supplemented by the taking of depositions of financial experts. The Master's Report recommended that certain assets of the medical practice be valued as marital property, but he declined to value the license as property, and he rejected the plaintiff's method of valuation which would have projected future income and reduced it to present value. This was consistent with subsequent case-law development.

The undersigned represented defendant/physician through hearing and the filing of Exceptions, which were eventually withdrawn. The plaintiff was represented by William H. Haberstroh, 1116 - 12<sup>th</sup> Avenue, Altoona, PA (814-944-9486).

9. Commonwealth v. William C. Ermin et al., C.A. 930-935 of 1977-This was a prosecution of six (6) members of a motorcycle gang for Aggravated Assault and related offenses. After administering a severe beating to a rival, certain members of this gang dragged the victim to a well-traveled street where they left him semi-conscious, apparently hoping he would be struck by a passing vehicle.

The difficulty in this prosecution was that the victim's testimony was largely uncorroborated, and his credibility and character subject to impeachment. Furthermore, most of the defendants presented alibi defenses.

All defendants were convicted following a trial which took place before the Honorable Ellis W. VanHorn, Jr., Specially Presiding, between July 10 and July 11, 1978. I was sole counsel prior to and during trial. The defendants were represented by Harold E. Miller, Esq., Mellon Bank Bldg., Altoona, PA (814-943-1462).

10. Brady Construction Co. v. Northern Blair County Regional Sewer Authority (American Arbitration Association arbitration)-This was a dispute between a general contractor and a sewer authority arising from construction of a municipal sewer system. The dispute centered around certain change orders generated by the project engineer, and the extent to which they conformed to original plans for the system.

Due to the unavailability to me of certain files and records, I have been unable to determine the names and addresses of the arbitrator and of claimant's counsel. I am likewise unable to set forth the amount of the award, other than to note that it was substantially

lower than the amount claimed, and that the arbitrator rejected a claim for prejudgment interest.

The Arbitration hearing was held on June 1, 1982, in Lewistown, Pennsylvania.

9. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Between 1981 and 1983, I was one of two special prosecutors assigned to an investigating grand jury, one of the first such county-wide investigations conducted outside of Philadelphia and Allegheny Counties pursuant to Pennsylvania's Grand Jury Act. This investigation led to the successful prosecution of a local organized crime "family," linked by the Pennsylvania Crime Commission to the LaRocca Family of Western Pennsylvania.

I personally conducted numerous grand jury sessions and prosecuted the first cases arising out of the investigation. During jury selection in Commonwealth v. Vincent Caracciolo, C.A. 234 of 1982 (Blair County), the defendant, the enforcer for the local crime family, agreed to become a Commonwealth witness and eventually testified in the successful prosecutions of others, including John M. Verilla, listed by the Crime Commission as a "soldier" in the LaRocca organization.

As District Attorney, I personally supervised successful criminal investigations into fiscal wrongdoing at (1) Altoona City Treasurer's office; (2) Altoona-Johnstown Catholic Diocese; (3) Altoona Area Vo-Tech School District.

I served as the managing partner of the law firm of Jubelirer, Carothers, Krier, Halpern and Smith between 1981 and 1983. During that period, I supervised personnel, provided fiscal management, and had responsibility for the firm's general operations.



During the late 1970's, I served as co-counsel with the Blair County District Attorney on three first degree murder prosecutions: Commonwealth v. Lee Irvin Green, Commonwealth v. Ronald Pfahler and Commonwealth v. Ronald Miller.

During the early 1980's, I served as solicitor for the Northern Blair County Regional Sewer Authority. At the time I was retained, the Authority was experiencing problems of fiscal management and dissension among participating municipalities. The possibility of default on a bond issue was real. I took steps to conciliate factions on the board, instituted litigation where necessary to collect sums owed to the Authority, and served as local counsel on a bond issue which restored the fiscal stability of the Authority.

I was an active member of the Pennsylvania Supreme Court's Criminal Procedural Rules Committee from 1986 until 1989. The Committee has the responsibility for drafting and recommending to the Court additions and amendments to criminal rules. I was integrally involved in discussions, and the drafting, of new post-verdict motions rules which were intended to dramatically change criminal post-verdict practice in Pennsylvania.

During my first three years on the Common Pleas Court bench, a pre-existing criminal court backlog was reduced from nearly 1,500 pending cases to an inventory of approximately 300 cases. After my appointment as Administrative Judge by the Chief Justice of Pennsylvania in July, 1987, the criminal court inventory was reduced by more than one-half with new procedures implemented for both the conduct of pre-trial conferences and the disposition of post-verdict motions.

As Administrative Judge, I undertook the streamlining of civil trial procedures which were intended to lead to the disposition of approximately 2,000 old, pending cases. I also engaged the National Center For State Courts to propose a case management plan for civil and domestic relations cases in the Court of Common Pleas of Blair County.

Additionally, I supervised the compilation of the first set of judicial opinions in Blair County in an effort to promote greater uniformity of practice and adjudication among judges of my court.

My work as Administrative Judge received written commendation from the Court Administrator of Pennsylvania.

After my appointment to the U.S. District Court, the Judicial Council for the Third Circuit decided that Johnstown, PA, a locale which had for years been statutorily designated as a place for holding court, should be provided with both a court facility and a judge to hear cases. Working with then-Chief District Judge Maurice Cohill, I spearheaded the new court project. With the substantial assistance of the Clerk of Court, the Third Circuit, and the Administrative Office of U.S. Courts, I oversaw the construction of a "full service" court facility in Johnstown. This included not only a courtroom and chambers but also a satellite clerk's office. I became the judge assigned to Johnstown. I am the only judge assigned to that vicinage, hearing both jury and non-jury matters on a regular basis.

While serving on the district court, I was asked to work with representatives of the Women's Bar Association after several members reported to the chief judge that several of my colleagues had failed to grant continuances sought by women lawyers who were pregnant or who were on family leave following child birth. As a result of our cooperative efforts, the Western District adopted a policy statement supportive of the Women's Bar initiative.

By appointment of then-Chief Judge Sloviter, I served as a member of the Commission on Race and Ethnicity of the Third Circuit Task Force For Equal Treatment in the Courts. (A copy of the lengthy report is provided for use by the Majority, and a copy for use by the Minority.)

From 1993 through 1999, I served as a member of the Advisory Committee on Criminal Rules of the U.S. Judicial Conference. In the last two years of my tenure, we undertook a re-styling of the rules, and I was appointed chair of one of two ad hoc committees which, between them, reviewed all of the criminal rules and recommended stylistic changes.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

ANSWER:

I will not derive any future receipts from deferred income arrangements, stock, options, uncompleted contracts nor other future benefits from any previous business relationships, professional services, firm memberships, former employers, clients, or customers.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

ANSWER:

I know of no categories of litigation or financial arrangements that are likely to present potential conflicts of interest. If anything, the potential for conflicts would seem less likely on the court of appeals than on the district court.

My wife's employment with a local bank has sometimes given rise to potential conflicts. Where her employer is a party, I immediately recuse myself from the case. Where I know a party to be a customer with whom my wife has worked directly, I immediately recuse myself from the case. Occasionally, I will inquire of my wife if a person or entity involved in litigation has any business interest with her or with her bank.

On those rare occasions where a party has been a close friend or former associate, I have immediately recused from

the case. I will continue to follow the provisions of the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

ANSWER:

I have none.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

ANSWER:

Income received during 2000 and 2001:

See financial disclosure report filed pursuant to the Ethics in Government Act of 1978 (ATTACHMENT "C")

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

ANSWER:

Financial statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER:

I have never held a formal position in a political campaign, except to the extent that I served as Blair County coordinator for Dick Thornburgh in his primary campaign for Governor of Pennsylvania in 1978. Prior to my appointment as Blair County District Attorney in 1983, I had volunteered in various political campaigns, doing door-to-door canvassing, writing speeches and transporting candidates.

## ATTACHMENT "C"

AO-10 Rev. 1/2001		<b>FINANCIAL DISCLOSURE REPORT</b> <b>FOR CALENDAR YEAR 2000</b>		<i>Report Required by the Ethics in Government Act of 1978 (5 U.S.C. App., §§161-111)</i>	
1. Person Reporting (Last name, first, middle initial) SMITH, D. Brooks		2. Court or Organization United States District Court for the Western District of Pennsylvania		3. Date of Report 9/18/01	
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Judge-Active		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>9/10/01</u> ___ Initial ___ Annual ___ Final		6. Reporting Period 1/1/00 - 9/17/01	
7. Chambers or Office Address United States District Court 319 Washington Street - Room 104 Johnstown, PA 15901		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.					

## I. POSITIONS. (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. Trustee	Saint Francis College, Loretto, PA (now known as Saint Francis University)
2. _____	_____
3. _____	_____

## II. AGREEMENTS. (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1. _____	_____
2. _____	_____
3. _____	_____

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1. 2000	Keystone Financial - Vice President, Commercial Lending Salary (\$)	\$ _____
2. 2001	M & T Bank - Vice President, Commercial Lending Salary (\$)	\$ _____
3. 2001	Promistar Bank - Vice President, Commercial Lending Salary (\$)	\$ _____
4. _____	_____	\$ _____
5. _____	_____	\$ _____

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Smith, D. Brooks	9/18/01

V REIMBURSEMENTS -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/> NONE (No such reportable reimbursements.)	
Dickinson School of Law	April 6, 2000 - Carlisle, PA - Annual Seniors Dinner (hotel and dinner)
George Mason University - Law and Economics Center	May 5-12, 2000 - Tucson, AR - Law & Economics Institute (travel, housing and food)
Allegheny County Bar Association	June 15-16, 2000 - Champion, PA - Bench/Bar Conference (hotel and food)
USAID (East/West Management Institute)	July 5-15, 2000 - Sofia and Varna, Bulgaria - Two (2) Workshops on Judicial Ethics (Travel, housing and per diem for food, etc.)
USAID (East/West Management Institute)	October 19-26, 2000 - Sofia and Hissaria, Bulgaria - Two (2) Workshops on Intellectual Property Rights (travel, housing and per diem for food, etc.)
ABA/CEELI (American Bar Association Central and East European Law Initiative)	May 10-18, 2001 - Chelyabinsk & Moscow, Russia - Criminal Procedure Workshop (travel, housing and food)
Allegheny County Bar Association	June 14-16, 2001 - Champion, PA - Bench/Bar Conference (hotel and food)

. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/> NONE (No such reportable gifts.)		
		\$
		\$
		\$
		\$

[ LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)*

<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input checked="" type="checkbox"/> NONE (No reportable liabilities.)		

Value Codes	1=\$5,000 or less	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000
	O=\$500,001-\$1,000,000	P1=\$1,000,001-\$5,000,000		P2=\$5,000,001-\$25,000,000	
	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more			

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Date of Report

Smith, D. Brooks

9/18/01

**VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-57 of instructions.)

A Description of Assets (including trust assets)	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period					
	(1)	(2)	(1)	(2)	If not exempt from disclosure					
	Asset Code (A-1)	Type Code (div. or int.)	Value Code (1-9)	Value Method Code (C-1)	Type Code (buy, sell, merger, redemption)	Date Month Day	Value Code (1-9)	Gain Code (A-H)	Realized buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
Governor Prime Money Mkt (S) 1,5	A	int.	J	T						
Governor Prime Money Mkt 2,5	A	int.	J	T						
Governor Aggressive Growth Fd. (S) 1,6	A	div.	J	T						
Governor Established with Fd. (S) 1,7	A	div.	J	T						
Governor Lifestyle Growth Fd. 2,8	A	int./div.	J	T						
Governor Municipal Bond Fd (J) 9	A	int.	J	T	Sell	4/23/01	J	A		
Keystone Financial Inc. (J) 3 (common)	C	div.			Sell	10/1/00	K	D		
Keystone Financial Inc. (S) 1,3 (common)	B	div.	J	T	Buy	2/2/00	J			
KP Miller Realty (LP) 2										
M&T Bank (J) (common)	A	div.	J	W						
Master's Select Equity Fd. (S) 1	B	div.	L	T	Merger	10/1/00	L			
Mid-State Bank (now Keystone/M&T) 401K(S)	A	div./int.	J	T						
Promistar Bank (S) (common) 1	E	div./int.	M	T						
Promistar Bank (J) (svgs)	A	div.	J	T	Buy	5/15/01	J			
Promistar Bank (J) (eking)	A	int.	J	T	Account Opened	3/22/01	J			
Promistar Bank (S) (svgs)	A	int.	J	T	Account Opened	8/24/01	J			
Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$10,000; E=\$10,001-\$25,000; F=\$25,001-\$50,000; G=\$50,001-\$100,000; H=\$100,001-\$250,000; I=\$250,001-\$500,000; J=\$500,001-\$1,000,000; K=\$1,000,001-\$5,000,000; L=\$5,000,001-\$10,000,000; M=\$10,000,001-\$25,000,000; N=\$25,000,001-\$50,000,000; O=\$50,000,001-\$100,000,000; P=\$100,000,001-\$250,000,000; Q=\$250,000,001-\$500,000,000; R=Over \$500,000,000										
Value Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$10,000; E=\$10,001-\$25,000; F=\$25,001-\$50,000; G=\$50,001-\$100,000; H=\$100,001-\$250,000; I=\$250,001-\$500,000; J=\$500,001-\$1,000,000; K=\$1,000,001-\$5,000,000; L=\$5,000,001-\$10,000,000; M=\$10,000,001-\$25,000,000; N=\$25,000,001-\$50,000,000; O=\$50,000,001-\$100,000,000; P=\$100,000,001-\$250,000,000; Q=\$250,000,001-\$500,000,000; R=Over \$500,000,000										
Asset Codes: A=Appraisal; B=Book value; C=Cost (real estate only); D=Other										
Value Method Codes: A=Assessment; B=Estimated										
Transaction Codes: A=Buy; B=Sell; C=Merger; D=Redemption; E=Dividend; F=Interest; G=Gift; H=Loan; I=Lease; J=License; K=Purchase; L=Sale; M=Settlement; N=Transfer; O=Trust; P=Withdrawal; Q=Other										

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Smith, D. Brooks	9/18/01

**V Page 2 INVESTMENTS and TRUSTS -- income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Description of Assets (including trust assets)  <i>Place "X" after each asset covered by this disclosure</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	E. If an exempt from disclosure				
	Type (e.g., div., int., etc.) (A-H)	Amount (J-K)	Value (L-M)	Value (N-O)	Type (e.g., buy, sell, margin, redemption) (P)	Date (Q) Month/Day	Value (R) (S-P)	Gain (T) (U-V)	Identity of payor/seller (if not self-transaction) (W)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
17 Promistar Bank 401K (S)	A	div./int.	J	T	Opened	7/1/01	J		
18 Raymond James IRA4	A	div./int.	J	T					
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

Income Code: A=\$1,000 or less (See Col. B-F, D)	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000
F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H=\$1,000,001-\$5,000,000	I=\$5,000,001-\$25,000,000	J=More than \$25,000,000

Value Code: J=\$15,000 or less (See Col. G-I, D)	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000	O=\$500,001-\$1,000,000	P=\$1,000,001-\$5,000,000	Q=\$5,000,001-\$25,000,000	R=More than \$25,000,000
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Value Method Code: Q=Appraisal (See Col. Q)	R=Book value	S=Other (real estate only)	T=Assessment	U=Extimates
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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Smith, D. Brooks	9/18/01

## II. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report)

Held in spouse's self-directed M&T Securities (formerly Keystone Brokerage) IRA

Held in self-directed M&T Securities (formerly Keystone Brokerage) IRA

Keystone Financial completed a merger with M&T Bank on October 1, forcing sale of a portion of position

Custodian SEI Trust Co. - All investment decisions are made by Raymond James/SEI, and investor is not advised as to named funds bought and sold in any period; monthly statements list only generic categories, e.g. "large cap value fund." Essentially, investor purchases Raymond James/SEI product which is itself akin to a mutual fund.

Name changed 1/01 to Vision Institutional Money Market Fund

Name changed 1/01 to Vision Small Cap Stock Class A

Name changed 1/01 to Vision Large Cap Core Class A

Name changed 1/01 to Vision Managed Aggressive Growth A

Name changed 1/01 to Vision Muni Income Fund

## . CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*D. Brooks Smith*

Date September 18, 2001

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	13	075	32	Notes payable to banks-secured by residence	20	000	00
U.S. Government securities-add schedule			00	Notes payable to banks-unsecured			00
Listed securities-add schedule (M & T Bank stock 1,317.77 shares @ \$64.95/sh.)	85	589	16	Notes payable to relatives			00
Unlisted securities--add schedule			00	Notes payable to others			00
Accounts and notes receivable:			00	Accounts and bills due			00
Due from relatives and friends			00	Unpaid income tax			00
Due from others			00	Other unpaid income and interest			00
Doubtful			00	Real estate mortgages payable-add schedule			00
Real estate owned-add schedule (Residence)	225	000	00	Chattel mortgages and other liens payable			00
Real estate mortgages receivable			00	Other debts-itemize:			00
Autos and other personal property	50	000	00				
Cash value-life insurance	85	407	11				
Other assets itemize: 401(K) KHS	131	606	06				
IRA - KHS (See Attachment "D")	30	891	47				
IRA - DBS (See Attachment "D")	47	232	18				
IRA - DBS (See Attachment "D")	42	079	10	Total liabilities	20	000	00
Govt. Thrift Plan - DBS	144	921	48	Net Worth	855	801	88
Total Assets	875	801	88	Total liabilities and net worth	875	801	88
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			00	Are any assets pledged? (Add schedule)	No		
Leases or contracts (vehicle \$405.88 x 24 pyts)	9	741	12	Are you defendant in any suits or legal actions?	No		
Legal Claims			00	Have you ever taken bankruptcy?	No		

## ATTACHMENT D

## IRA - Karen H. Smith

Vision Institutional Money Market Fund		\$ 2,230.94
250 sh.	Promistar Financial Corp.	\$ 5,880.00
684.002	Vision Small Cap Stock Class A N/C	\$ 6,655.34
724.579	Vision Large Cap Core Class A N/C	\$ 6,716.85
745.510	Masters Select Equity	\$ 9,408.34
	<b>TOTAL</b>	<b>\$30,891.47</b>

## IRA - D. Brooks Smith

343.090	Prime Obligation Fund	\$ 343.09
736.323	Large Cap Value Fund	\$13,850.24
673.789	Large Cap Growth Fund	\$12,673.97
99.864	Small Cap Value Fund	\$ 1,784.57
89.828	Small Cap Growth Fund	\$ 1,326.76
645.066	Core Fixed Income Fund	\$ 6,908.66
262.830	International Fixed Income Fund	\$ 2,654.58
828.697	International Equity Fund	\$ 7,690.31
	<b>TOTAL</b>	<b>\$47,232.18</b>

## IRA - D. Brooks Smith

Vision Institutional Money Market Fund		\$ 33.79
4,375.162	Vision Managed Alloc. Aggressive Growth A N/C	\$42,045.31
	<b>TOTAL</b>	<b>\$42,079.10</b>

Provision for Federal Income Tax			00				
For special debt			00				

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

## ANSWER:

Since becoming a Common Pleas Court judge in December, 1984, I have been precluded by ethical restriction from participating in certain of the professional and charitable efforts to serve the disadvantaged that I was involved in as a practicing lawyer.

While a Common Pleas Court judge, I did serve as a board member for the Salvation Army of Altoona, and I assisted in various functions sponsored by the Multiple Sclerosis Society and by Big Brothers/Big Sisters. I also served on the advisory board of the Domestic Abuse Project of Altoona. I am no longer a member of these boards, because my schedule as a district judge sitting in two court vicinages some distance from my home makes meeting attendance all-but-impossible.

While engaged in the practice of law, I served on the board of directors of Blair County Legal Services Corporation, attending regular meetings and, during one fiscal year, serving as a member of a budget committee.

I also served on the board of the Blair County Society for Crippled Children and Adults, and was appointed by Governor Dick Thornburgh in 1983 to the Governor's Advisory Committee To Oversee Implementation of Commonwealth's Plan for Equal Opportunity in the State-Supported Institutions of Higher Education.

When I was a practitioner in a small community, I frequently extended legal services to low-income clients for reduced

fees, or for no fee at all. Although these instances are too far in the past to recount, nor are client records available from my former law firm, I can recall occasions when poor clients sought to compensate me by gift of such things as home-made apple butter, a shirt, or a card of thanks.

I cannot recall ever having refused to represent a disadvantaged person, otherwise unable to secure legal representation, because he or she was unable to advance a fee.

Since 1993, I have served on the board of trustees of Saint Francis College (now University), and have participated in various programs sponsored by the College intended to promote the values of community service. I have been chair of an annual Law Day program for many years. I was one of two board members to urge and support the implementation of a program providing summer educational opportunities for inner city youth who wish to attend college. That program, known as S.C.O.R.E.S. (Summer College Opportunities for Realizing Educational Success), has for the past two summers brought together high school students from Washington, D.C., Baltimore and Philadelphia for pre-college, on-campus educational opportunities.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

**ANSWER:**

I previously belonged to Tyrone Lodge No. 494, F.&A.M., a masonic body. As with all Masonic bodies, it restricts its membership to men. I resigned my membership in 1998.

I previously belonged to the Spruce Creek Rod and Gun Club, a rustic hunting and fishing club which admits only men to

membership. I joined the club in 1982 for largely sentimental reasons: it is where my grandfather taught me to fish when I was seven or eight years old. I urged the club, through letters to club officers and personal contacts with members, to consider changing its exclusive membership provision. These efforts were unsuccessful. Eventually, in late 1999, I voluntarily resigned my membership.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER:

I am aware of no selection commission within this jurisdiction which recommends candidates for the court of appeals.

My experience in the judicial selection process has been quite limited. I neither discussed nor had contact with either United States Senator from Pennsylvania about a court of appeals vacancy prior to a March 5, 2001 when I was interviewed at the White House by members of the Office of Counsel to the President. Nor did I discuss or have contact with any Senator's staff prior to that meeting, or any representative of an interest group or the organized bar.

During the meeting, I was not asked about any cases then pending before me, nor was I asked any hypothetical questions about how I might rule on a specific issue.

Because I was uncertain of my interest in the court of appeals at the time of my interview, I indicated to the interviewers that I would advise them the following day as to whether or not I wished to be considered. I called the Office of Counsel the following day--March 6--and advised them that I wished to have my name considered for the vacancy. I had no further contact with any member of the administration, Senator, Member of Congress or their staffs until receiving a call from the Office of Counsel to the President on or about May 23<sup>rd</sup>, inquiring if I still

wished to be considered for the vacancy on the Third Circuit.

I had no further contact with the White House, and no contact with any Senator, Member of Congress, or staff, until receiving a telephone call on June 11 advising me that the President wished to go forward with my nomination. I received a call the following day from Senator Specter offering his support. A background investigation was initiated by the FBI on Monday, July 2. On Monday, September 10, I was advised by both the White House Counsel's Office, and by the Office of Legal Policy of the Justice Department, that my nomination had been sent to the Senate that afternoon. Thereafter, I placed courtesy telephone calls to both Senator Specter and Senator Santorum, and also to my congressman, Representative Shuster.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**ANSWER:**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal judges have an important, but limited, role in our constitutional system. They are to decide only cases brought to them by litigants, and in doing so, must be guided only by applicable legal principles and the facts before them. Courts are not legislative bodies, and the judges who serve on them must always be constrained by stare decisis.

Federal judges, sitting as they do on courts of limited jurisdiction, must always assure themselves that they may properly take cognizance of the matters before them. They must also be conscious of the limitations of their own institutional competence.

Federal judges, as unelected and life-tenured officials, must be vigilant in assuring that the law and the facts dictate their decisions, not personal whim or personal preference. A federal judge must reach a particular result in a case through the application of intellectually respectable judicial reasoning. This means that precedent must be the polestar of that analysis.

A federal judge should aspire to be the "good judge" once described by the late Justice Potter Stewart: "The mark of a good judge," he said, "is a judge whose opinion you can read and ... have no idea if the judge was a man or a woman, Republican or Democrat, a Christian or a Jew, and, if a Christian, a Protestant or a Catholic. You just know he [or she] was a good judge."



Senator FEINGOLD. Thank you, sir.

In order to move this hearing along and, I think, provide for the most efficient questioning, we will have ten-minute rounds of questions and I will now begin the first round.

Judge, I would like to ask you about the large number of expense-paid trips you have taken since becoming a Federal judge. According to your financial disclosure reports, between 1992 and 2000, you reported going on 12 separate trips sponsored by either the Foundation for Research on Economics and the Environment, known as FREE, or the George Mason University Law and Economics Center, known as LEC. Only four Federal judges in the whole country out of a total of over 1,000 active and senior Federal Article III judges took more of these trips than you did during this period.

As I understand it, the trips were for educational seminars put on by these organizations. The seminars were held at resorts in Montana, Hilton Head, South Carolina, Amelie Island, Florida, and Palm Springs, California. The value of the trips you took over the last eight years is estimated at over \$30,000, although it appears that you did not disclose some of these trips on your annual financial disclosure forms.

FREE, one of the organizations that sponsored the trips you went on, promotes what it calls "free market environmentalism." They emphasize property rights, market processes, and responsible liberty, in their own words. LEC teaches economics from a "property rights perspective." These groups are well known for their opposition to many of the major environmental laws of our country, and not surprisingly, their financial support comes from large corporations such as General Electric, Texaco, and Monsanto, and very conservative foundations funded by Richard Mellon Scafe and Charles Koch.

But more important for what I am about to ask you, these groups freely admit that the purpose of the judicial education trips they sponsor is to influence Federal judicial decision making. For example, the Dean of the George Mason Law School told ABC News "20/20" in April 2001 that LEC is "out to influence minds." He said, "If court cases are changed, then that is something we are proud of, as well."

My concern about these judicial junkets is twofold. First, and I will ask you a couple questions about that first, it seems to me that going on all these trips makes it look like you are taking advantage of your public office for private gain, and the seminar topics seem to be repetitive sometimes, by and large, the same.

So in fairness, let me ask you, did you learn much new from the LEC law and economics seminar that you went to in March 1994 in Hilton Head, South Carolina, after having gone to the LEC law and economics seminar in Hilton Head in June 1993, the year before?

Judge SMITH. Senator, my recollection of the agendas is that there were different speakers at both of those programs, there were different topics, and there were always different readings. One thing I would emphasize is the intensity of these programs. They are the most intellectually stimulating courses, CLE courses or any other educational course, I have engaged in since I was in college

and law school and they demand not only participation at the sessions themselves, but they demand preparation by the readings.

With your indulgence, Senator, I would like to just state one matter, and that is in your introductory remarks, I believe that you said that I had not reported all of these and I, to the best of my knowledge, I have always complied with the reporting requirements. That is my understanding, sir.

Senator FEINGOLD. You are saying, did you report the value of these trips?

Judge SMITH. I am saying I complied with the reporting of attendance at these trips. Perhaps I misunderstood.

Senator FEINGOLD. Let me follow on that in a minute, but let me just clarify your last answer. Do you view these trips mainly as educational or recreational?

Judge SMITH. I view them mainly and almost entirely as educational. I am aware, Senator, that in my case in particular, there have been suggestions that we attend these seminars and engage in activities and I read that I have engaged in the activity of golf and horseback riding. I have to concede with some embarrassment, I suppose, that my friends have gotten a great deal of amusement at my expense out of that report. I have not held a golf club since I was in junior high school, and at that point in time, I did not do a very good job at it, either. So I can assure you that my time and my efforts and my energies have been directed toward doing the readings and attending the courses.

Senator FEINGOLD. Thank you, Judge. Let us get back to the financial disclosure issue. Now, you suggested that perhaps you have reported all the trips, and we will, in fairness, follow up on that. My understanding was that you did not necessarily report all the trips. But at a minimum, it appears that the value of the trips has not been included in every case on your forms. Their value has been estimated by looking at the disclosures made by other judges who attended these same seminars. Now, why would you not have included the value of some of these trips?

Judge SMITH. Again, Senator, I have believed in every year that I have complied with the reporting requirements that are required of Federal judges on an annual basis. That is something that, indeed, I will check after this hearing. But I have never been made aware of any inadequacy or any omission in my reporting, and in fact, the Administrative Office of the United States Courts, I think, very assiduously checks these reports for any possible omissions or deficiencies or inconsistencies.

Senator FEINGOLD. Judge, we will in good faith follow up with you on those matters.

The second part of my concern about these trips is that they appear to be part of an intentional and well-funded effort by corporations to "educate" judges and convince them outside of the adversary process of the courtroom that their view of the law is the correct one. Do the comments of George Mason's Law School dean that I quoted a moment ago concern you at all? Is it appropriate for corporate interests to try to influence the Federal judiciary in this way?

Judge SMITH. Well, certainly, the remarks concern me and, certainly, it is inappropriate for corporations or anyone else to attempt

through some ex parte forum or manner to influence a Federal judge. I would say, however, that my experience with the programs I have attended is that they have been extremely balanced in their presentation.

The second point I would like to make, Senator, is that Federal judges are accustomed by training and by experience to hearing on a day-to-day basis different points of view. It is what we do. It is what we are about. I have confidence that I and confidence that my colleagues in the Federal judiciary can hear these various points of view without being influenced one way or another by them.

I realize that your concerns, Senator, about these programs go beyond that, however, to the funding of them——

Senator FEINGOLD. That is correct.

Judge SMITH [continuing]. And I realize that is another issue entirely.

Senator FEINGOLD. It is an area of concern. Are you familiar with Advisory Opinion No. 67 from the Judicial Conference Committee Codes of Conduct concerning the issue of a judge's participation in a privately-funded education seminar?

Judge SMITH. I am familiar with it. I have studied it and I have been guided by it in my attendance at these seminars.

Senator FEINGOLD. Did you inquire into FREE's or LEC's sources of funding before attending any of these privately-funded seminars?

Judge SMITH. My recollection is that, with respect to FREE's seminars, which I attended in 1996, 1997, and 1998, I did indeed. I had not heard of FREE and so I did make more than one telephone call upon receiving the first invitation. I was informed that these programs were funded by foundation monies. In fact, it was described at one point as dead people's money, dead people's foundations. The foundations were named to me, and then I would later see them on program agenda. They were foundations which I knew had not been parties to litigation before me, are not now parties to litigation before me, and I have no familiarity really beyond that with those foundations.

Senator FEINGOLD. How did you comply with your obligations under Advisory Opinion 67 to make sure it would not be improper to attend the seminar?

Judge SMITH. I thought that that was what the funding requirement question implied. Because I knew of no personal or political connection in any way with these foundations that funded the programs, because I was aware of no litigation that had ever taken place before me involving those programs, I was satisfied that under 67, it is left to the judge to determine whether or not it is appropriate to attend.

Senator FEINGOLD. Thank you very much, Judge. That completes my first round.

Now I will turn to the ranking member of the committee, Senator Hatch. Senator?

**STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Thank you, Senator Feingold, and welcome, Judge Smith. We are happy to have you with us and look forward to your confirmation.

Judge SMITH. Thank you very much, Senator Hatch.

Senator HATCH. I am exceedingly pleased that the committee is considering the nominations of four exceedingly well-qualified candidates for the Federal bench and I want to welcome all of you to the committee.

Our only Circuit Court nominee, of course, is you, Judge Smith, who, of course, has been nominated to be the Third Circuit Court of Appeals judge. Judge Smith is currently the Chief Judge for the Western District of Pennsylvania. He has compiled an impressive record as a judge since 1988, when at age 36 he became one of the youngest Federal judges in the country. Prior to that, Judge Smith has served as a State Court judge, as a prosecutor, and as a private practitioner with a law firm in Altoona, Pennsylvania, and, of course, has good law school credentials, as well.

Of course, anyone who has been reading the newspapers in the past few weeks knows that it would be impossible to comment on Judge Smith's credentials without mentioning the attacks he has come under from the usual liberal lobbyist special interest groups in Washington. As President Reagan would say, there they go again.

A story in yesterday's Pittsburgh Post Gazette noted, "Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations and too eager to travel to conferences paid for by businesses with interests in Federal litigation. But outside Washington's world of partisan politics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the Federal bench in Western Pennsylvania is being twisted by political opportunists. His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard working, and respectful to all." I think that is a pretty good editorial from the paper that has not always been known to support Republican politics.

Well, it is an election year and we know that some on the left of the mainstream groups in our society will not miss an opportunity to flex their muscles. Now, those groups who are working to discredit Judge Smith apparently believe that President Bush's Circuit Court nominees deserve to have their records distorted and their reputations dragged through the mud. I think that no judicial nominee deserves such treatment and that was something that I practiced as chairman for six of President Clinton's eight years in office.

I strongly agree with the Washington Post editorial of February 19, 2002, that "opposing a nominee should not mean destroying him." Referring to our last confirmation hearing, the Post pointed out, "The need on the part of liberal groups and Democratic Senators to portray a nominee as a neanderthal, all the while denying they are doing so in order to justify voting him down, is the latest example of the degradation of the confirmation process."

I look forward to hearing from you, Judge Smith, but I hope that all my colleagues in the Senate will be sensitive to the dangers to the judiciary and to the reputation of this body that will certainly result from the repeated practice of degrading honorable and ac-

complished people who are willing to put their talents to work in public service.

Now again, I do support a thorough and genuine review of a nominee's record and temperament and in no way do I think we should shy away from our constitutional role of providing advice and counsel. But, Judge Smith, there have been some questions raised concerning your attendance at certain judicial seminars and these are legitimate questions. It seems that the criticism is not so much that you have attended some seminars, at least the outside criticism, but rather that you attended the wrong seminars. It is a terrible thing to do that, I am sure. Of course, I am being sarcastic. People are supposed to laugh at that. [Laughter.]

If we are asking any specific questions, I would like to read what the American Bar Association Advisory Committee on the Code of Judicial Conduct has to say about judges' attendance at such seminars. This is what they say. "The education of judges in various academic disciplines deserves the public interest, that a lecture or seminar may emphasize a particular viewpoint or school or thought does not in itself preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to weigh them." That is Advisory Opinion No. 67, which was revised July 10, 1988.

I would also like to share what Chief Justice Rehnquist has said about the notion of somehow restricting or censoring the seminars that judges attend. He said, the "notion that judges should not attend private seminars unless they have been vetted and approved by a government is contrary to the public interest in encouraging an informed and educated judiciary, and contrary to the American belief in unfettered access to ideas."

One sponsor of judicial seminars is George Mason University's Law and Economics Center, known as the LEC. Although some have criticized the LEC for teaching legal theories related to the social science of economics, others have praised the LEC. For example, Justice Ruth Bader Ginsburg wrote that, "As a student of two seminars, I can confirm that the instruction was far more intense than the Florida sun. By lifting the veil on such mysteries as regression analysis and for advancing both learning and collegial relationships among Federal judges across the country, my enduring appreciation."

Another sponsor is the Foundation for Research on Economics and the Environment, known as FREE. Several judges appointed by Democratic Presidents participate in the management of FREE and two of President Clinton's judicial appointees sit on FREE's board of advisors.

Judge Smith, given the bipartisan praise that these seminars have received, I wonder whether you share the fears of some that attendance at such seminars has a negative effect on the ability of judges to act in a fair and impartial manner when deciding the cases before them.

Judge SMITH. It is my strong view, as I said a few moments ago, Senator Hatch, that attendance at these seminars by Federal judges who are accustomed day in, day out, and by training and by temperament to hear varying points of views and sometimes points of views that are out of the mainstream are matters we are

able to handle without being influenced unduly, and I am satisfied that I have been able to do just that.

I am not sure to this day that attendance at one of the seminars for me, as it did for Justice Ginsburg, has raised the veil on regression analysis, but I may keep trying. But these are seminars, these are educational experiences which are intended to introduce us to subject matter and issues which we do not always otherwise see. For some judges, there was no economic background in their educational experience, and with respect to the LEC, the George Mason programs, I am sure those programs have been quite valuable.

But I do not want to concentrate only on the programs offered by the two that have been the subject of questions concerning my participation. There are various entities and organizations, bar associations and law schools across the country, which offer programs on an ongoing basis for Federal judges. So one of the concerns, I think, we judges need to keep in mind always is the paramount concern raised by the chairman's question that we not be attending anything that might bear some taint by virtue of funding and funding by an entity with an interest before us, but also that we not be so inhibited in our attendance at educational programs which may be entirely appropriate and not bear any taint whatsoever.

Senator HATCH. Thank you, Judge. I would like to take a moment to comment upon your remarks during a 1993 speech about the "Violence Against Women Act." Now, that happens to be a bill that both Senator Biden and I take a special interest in and Senator Biden deserves a lot of credit for working on that, but I worked alongside him in passing that bill. So, naturally, I took a particular interest in following your speech. I have to say up front that I could not disagree more with your characterization of, I will call it VAWA to save time.

While the Supreme Court did strike down the civil remedy portion of VAWA, I am firmly convinced that there is nothing unconstitutional in the remainder of the Act. Its criminal remedies do not seek to strip State and local law enforcement of their authority as the primary protectors of women's safety. Rather, these provisions expressly pertain to crimes that cross State lines, an area where State and local governments have traditionally had difficulty prosecuting cases and, of course, where the Federal Government has long rendered its assistance.

Furthermore, the majority of the Act creates grant programs, provides training for State and local law enforcement, and establishes funding for community groups. Congress does have a history of providing such assistance to State and local governments and communities on matters of national crisis such as what we believe is violence against women, and I believe that the provision of such assistance is not only completely appropriate, but also necessary.

Judge Smith, I respect your view that law enforcement is a primarily local matter. To some extent, I believe basically everybody shares that view. But your criticisms of VAWA simply misconstrue, in my opinion, the nature and scope of the Act. VAWA does not federalize every crime pertaining to domestic violence or other violence targeting women.

So I will begin my questions on VAWA with a very straightforward question. Are you committed to following the Violence Against Women Act as enacted?

Judge SMITH. Absolutely. I am committed to adhering to the Violence Against Women Act as a statute as I am to any other Act of Congress.

Senator HATCH. Mr. Chairman, since I did not make my opening statement, could I just have a few minutes to finish one more question?

Senator FEINGOLD. Go ahead, Senator Hatch.

Senator HATCH. This is a matter that really concerns, I know, Senator Biden and me.

Senator FEINGOLD. Go ahead.

Senator HATCH. Senator Biden and I have walked arm-in-arm on this bill.

Senator BIDEN. This is called inoculating you. [Laughter.]

Senator SPECTER. This precludes Senator Biden from asking questions on this?

Senator HATCH. I certainly hope so. [Laughter.]

Call it whatever you will, but it is important. Having expressed my disagreement with your characterization of VAWA, I have to note that in your speech, you never discounted the problem presented by violent acts perpetrated against women. In fact, you describe the purpose of VAWA as “commendable” and observed that “domestic violence, of course, deserves our strongest reprehension.”

Now, you stated in your speech that you have personal experience in observing the difficulties associated with prosecuting domestic violence. Could you tell us a little bit about your personal experience in that regard?

Judge SMITH. Senator Hatch—

Senator HATCH. And especially talk about the one case where you were put at personal risk.

Judge SMITH. Senator Hatch, I go back at this point, I think, a fair number of years. I just turned 50 recently and can look back on over 25 years in the law. In my private practice and as a prosecutor, I had personal experience with many cases involving violence against women. I represented women in my private practice, and often women of very, very modest means who could not afford to pay or could not afford to pay a normal fee to be represented. I faced the problem as a prosecutor, as well. I saw the problem most frequently in my four years as a judge of the Court of Common Pleas.

I share, respectfully, with both you and Senator Biden, a deep concern for what cannot simply be described as a problem but what can only be described as a problem of such enormity as to constitute a national tragedy. My experience included being a member of the Domestic Abuse Advisory Board of our first domestic abuse project in Blair County, where I used to preside as a State Court judge, served as district attorney, and where I continue to reside today. My interest in the subject, my concern about doing something about it as a citizen, as a public official, extended to that.

The matter that you referred to, the specific matter, is something of an irony in life. Much of my experience as a lawyer was as a prosecutor. I was a district attorney. I was an assistant district at-

torney. I served as a special prosecutor for two years in an investigating grand jury effort in our part of Pennsylvania. I realize that you do not generally associate central Pennsylvania with organized crime, but we had some very, very serious organized criminal activity there, and during that period of time, I was one of the two prosecutors who handled that investigating grand jury.

At no time in my entire prosecutorial career, at no time while I was in this two-year grand jury investigation, which went into the activities of at least one made member of the LCN and involved his enforcer, who was even more dangerous—at no time was my life ever threatened, did I ever receive information that suggested my security was at risk, or did I, in the small city in which I reside, have any great concern in that regard.

The only time in my life, in my entire career in the law, that I have had my life threatened was when I represented a woman in a divorce, a woman of very modest means, who had an abusive husband. I can vividly recall, as Karen can, a bump at our house one night which we did not know the providence of, but learned quickly when we walked to our porch and saw red enamel paint all over our window and all over our porch. When we returned to the house, within minutes, the phone rang. It was an unidentified caller who said, “That is just the beginning. If you do not get off this case, we will burn your house down and then will kill you.”

For the ensuing week or two, and this has been 20 or 21 years ago, Senator, so I do not recall exactly how long it was, but I moved Karen out of the house. She resided with her parents during that period of time, and I and my house were under police protection. There was a police car parked across the street in our neighbor’s driveway every night affording us protection.

They were never successful in determining who made the call, who committed the vandalism. There is one ironic, perhaps amusing to some, final twist to that story. Despite the fact that there was never a perpetrator found, a culprit found, there was another effort to vandalize my house. Unfortunately for my neighbor, the vandal, the folks who were involved apparently in these threats, as well, had some difficulty telling their right from their left and the house that was vandalized was not mine on the left side on the street but my neighbor, who received a concrete block through a window in his house on the right-hand side of the street. But it was all related to this one case.

Senator HATCH. Let me just finish with just this comment.

Senator BIDEN. Senator, I am late and——

Senator FEINGOLD. I am going to have to——

Senator BIDEN. I will stipulate, he is a wonderful man.

Senator FEINGOLD. Senator Hatch——

Senator BIDEN. He is a great guy.

Senator FEINGOLD [continuing]. I am going to have to move on here.

Senator HATCH. All I want to do is put the letter of Margaret Gates in the record, who does say that you have a deep concern for the plight of battered women.

Senator FEINGOLD. Without objection.

[The prepared statement of Senator Hatch follows:]



## STATEMENT OF SENATOR ORRIN G. HATCH

I am pleased that the Committee is considering the nominations of four exceedingly well-qualified candidates for the federal bench, and I would like to welcome you to the Committee.

Our only circuit nominee on the agenda is D. Brooks Smith, who has been nominated to be a judge on the Third Circuit Court of Appeals. Judge Smith is currently the Chief Judge for the Western District of Pennsylvania. He has compiled an impressive record as a judge since 1988, when, at age 36, he became one of the youngest federal judges in the country. Prior to that, Judge Smith had served as a state court judge, as a prosecutor, and as a private practitioner with a law firm in Altoona, Pennsylvania. He is a 1973 graduate of Franklin and Marshall College and a 1976 graduate of the Dickinson School of Law in Pennsylvania.

Of course, anyone who has been reading the newspapers in the past few weeks knows that it would be impossible to comment on Judge Smith's credentials without mentioning the attack he has come under from the usual liberal lobbyist interest groups in Washington. As President Reagan would say, there they go again. A story in yesterday's Pittsburgh Post-Gazette noted, "Critics of Smith, many aligned with Democratic Party interests, say he has been too quick to dismiss valid lawsuits brought by individuals against corporations, and too eager to travel to conferences paid for by businesses with interests in federal litigation. . . . But outside Washington's world of partisan politics, Smith seems to have no enemies, only admirers. Those who have watched him work say an exemplary 14-year record on the federal bench in Western Pennsylvania is being twisted by political opportunists. His popularity outside the capital extends even to members of the opposing political party, who describe him as fair, hard-working and respectful to all." Well, it is an election year and we know the left of mainstream groups will not miss an opportunity to flex their muscles.

Those groups who are working to discredit Judge Smith apparently believe that President Bush's circuit court nominees deserve to have their records distorted and their reputations dragged through the mud. I think that no judicial nominee deserves such treatment, and that was something I practiced as Chairman for 6 of President Clinton's 8 years in office. I strongly agree with the Washington Post editorial of February 19, 2002, that "opposing a nominee should not mean destroying him." Referring to our last confirmation hearing, the Post pointed out, "The need on the part of liberal groups and Democratic senators to portray [a nominee] as a Neanderthal—all the while denying they are doing so—in order to justify voting him down is the latest example of the degradation of the confirmation process." While I look forward to hearing from Judge Smith, I hope that my colleagues in the Senate will be sensitive to the dangers to the judiciary and to the reputation of this body that will certainly result from the repeated practice of degrading honorable and accomplished people who are willing to put their talents to work in the public service. Again, I fully support a thorough and genuine review of a nominee's record and temperament, and in no way do I think we should shy away from our constitutional role of providing advice and consent.

Turning to our three district court nominees, let me start with Ralph Beistline, who has been nominated for the District of Alaska. Judge Beistline began his legal career as the first law clerk for the Superior Court in Fairbanks, after which he maintained a litigation practice for 17 years. Since then, Judge Beistline has presided over a state trial court of general jurisdiction, and has earned a stellar reputation for fairness and hard work among lawyers and judges in his community.

Our next nominee, David Bury, attended the University of Arizona College of Law, and since then has gained experience in almost every area of civil trial practice. He is a Fellow of the American College of Trial Lawyers and an Advocate in the American Board of Trial Advocates. He is also listed in the "Best Lawyers in America." He has served as a lawyer representative to the Ninth Circuit Judicial Conference, on the Commission on Trial Court Appointments for Pima County, and on the disciplinary Committee for the State Bar of Arizona.

Last, but certainly not least, is Robert Randall Crane, who has been nominated to the Southern District of Texas. Mr. Crane's trajectory towards a prodigious career could be seen very early because he graduated from high school with honors at age 16—and then completed an economics degree at the University of Texas at Austin at age 19. Since graduation from the University of Texas School of Law, Mr. Crane has put his considerable talents to work at the law firm of Atlas & Hall, as well as devoting a truly remarkable amount of time volunteering for a number of important charitable and legal organizations.

I am very impressed with the accomplishments and credentials of each of these four nominees. I congratulate the President for selecting you for one of the most

noble and honorable public position, and I welcome you to the Committee. I look forward to this hearing, and to working with my Democratic colleagues to ensure your swift confirmation.

Senator FEINGOLD. Let me just say briefly, before I turn to Senator Biden, I have tremendous affection for the Senator from Utah. In fact, he was a very fair and effective chairman and I like working with him. Usually, he——

Senator BIDEN. Do not get carried away.

Senator FEINGOLD. Just hold on. [Laughter.]

Just be patient. He usually makes a statement at the beginning and there is usually some pretty tough language about who is going after this judge and the liberal groups that are involved, but he almost always absolves the Senators that are present. He almost always says that this does not apply to Senator Biden or Senator Feingold. Well, he did not do that this time.

Senator HATCH. So that means you are going to—[Laughter.]

Senator FEINGOLD. So let me simply say that my record on this issue of these judicial trips existed long before Judge Smith was appointed or nominated. I have introduced legislation with Senator John Kerry to do something about these judicial trips. We have tangled with the Chief Justice on this issue and I think it is fair enough and important for this committee to ask about these and to consider the possibility not only of whether these are fair or whether these are appropriate but also whether it is possible to use them to an excessive degree. I think the Senator knows me well enough to know that that is my record and that is the nature of my questions.

Having said that, I will turn to Senator Biden.

**STATEMENT OF HON. JOSEPH R. BIDEN, JR, A U.S. SENATOR  
FROM THE STATE OF DELAWARE**

Senator BIDEN. Thank you very much. Welcome, Judge. Let me begin by stipulating a couple things. I do not have any doubt about your sensitivity or concern about battered women in the individual sense, as individuals. And I do not have any question about your character nor your temperament because Senator Specter vouched for you, and literally, I mean this sincerely, that is enough for me. I need no more than Senator Specter telling me that.

I do not care whether you traveled. I do not care what you do. I do not care about any of the things that have been raised so far. I care about your judicial philosophy, your jurisprudence. I might note parenthetically, had you gone to a conference sponsored by NARAL, I assure you the Senator from Utah would never have raised it. He would have never raised that. He would never have said——

Senator HATCH. You are absolutely right. I would not have raised that.

Senator BIDEN. Nor would anyone else. But I do not care where the heck you went. I care where you are going. I am worried about where you are going.

You made, and I will in the second round, if possible, get back to the Violence Against Women Act, but I do not have a personal investment in that in the sense that you turned out your prediction to be right. The Supreme Court did rule the provision that the Sen-

ator initially did not support and no one else supported which was a civil rights cause of action for an individual woman in Federal Court who had been battered and you were correct. You pre-saged the court's decision and the Fifth Circuit prior to that saying that, hey, that is beyond the scope of the Commerce Clause or Section 5 of the 14th Amendment or even, arguably, the 13th Amendment, and you turned out to be right, and you were very candid in your speech to the Federalist Society.

Now, you are a sitting Federal judge. I want to make something clear to you now. To the degree to which you are equally candid with me about the questions I am going to ask you on substance, I will maintain an open mind. If you suggest to me that you cannot respond in the same way you responded as a sitting Federal judge on the Violence Against Women Act, then I will do everything in my power to defeat you, including moving to the Senate floor to take an action I have never taken in my life as a United States Senator, a filibuster, okay?

So as long as we have got the ground rules straight here, and if you think I am trespassing beyond what you trespassed or what you went in terms of your speech as a sitting Federal judge, commenting on something that was clearly going to come before the Federal Courts at some point, just do not give me that argument. Do not say, it may come before me, because the Violence Against Women Act could have become before you, okay?

Now, let us start, if I can, and I am not going to get a chance to get through this all in one round, but let me speak to, and let me tell you straight up because you know, and I am sure they prepped you very clearly on my views and my jurisprudence. Well, I hope they did. They should have. I do not say that in a negative way. I hope they have told you, because it has been in every paper that your biggest problem might be the guy named Biden from Delaware, and so if you did not read that, then you are not a very informed judge. [Laughter.]

So they have to have prepped you. I hope they have prepped you on the substance of the law on Section 5 of the 14th Amendment, on the Commerce Clause, and whether or not, as Justice Souter has said, and let me quote from Souter. He says, "The resemblance of today's State sovereign immunity to the *Lockner* era industrial due process is striking. The court began this century by imputing immutable constitutional status to a conception of economic self-reliance that was never true to industrial life and grew incessantly frictional with every year, and the court has chosen to close the century by confirming like status on a conception of State sovereign immunity that is true neither to history nor to the structure of the Constitution. I expect the court's latest assay into immunity doctrine will prove to be equal to its earlier experiment in *laissez faire*, the one being unrealistic as the other, indefensible and probably as fleeting."

Now, that was in the dissent that Souter wrote in *Florida Pre-Pay*. You understand in *Boren v. Flores*, the progeny cases that followed from that, the court has taken increasingly—the Supreme Court has taken an increasingly active role, as your article pre-saged. And by the way, as usual, the Senator from Utah, who is one of the most worthy advocates in this place and a good friend,

did not accurately characterize your speech in violence against women when he said that you did not in any way disparage the nature of the problem. You said, based on your personal experience, the States have proven neither unwilling nor unable to address violence against women. Yet there is study after study after study, including 21 State task force reports, that scrupulously documented systematic barriers to women when trying to bring criminal and civil cases against their assailants. So your personal experience may have been that, but it was clearly proscribed and limited, your personal experience.

And you further went on to say—and I am paraphrasing, I will find the exact quote—that you did not know how this could be characterized as a national problem, a national problem, violence against women. You said this class of activities falls into activities that have a substantial national consequence. You do not understand how that could apply to violence against women. And you have argued, as this court has, and I tell you what, I am not being facetious when I say this, you could have been a clerk in the Supreme Court writing this decision because the rationale you offered in your Federalist Society speech relating to federalism was literally right in line with the majority of the Supreme Court.

So I am not arguing with your intellectual competence. I am arguing and my concern relates to your constitutional methodology, and it matters to me a lot, and I suspect Senator Hatch did not read today's Washington Post or yesterday's Washington Post which says that, if not stopped, Senators should ask him how such understanding can be squared, if it can, with the modern civil rights and environmental statutes, because people like me are concerned, and you know, most people do not, that the Supreme Court has already ruled the Older American Act is unconstitutional as it applies to States. Patent laws as applies to States, unconstitutional.

This is a literal and defensible revolution that is going on in the way in which we are looking at—that this Supreme Court is looking at the Commerce Clause and the categorization they now use, as was used prior to *Lockner* in the 1920s, in the 1930s, in the *Alden* case, the famous case we all learned in law school where the Congress passed a law saying that, by the way, we have a problem with our national rail system. They are unsafe and morale is bad. So they passed two laws saying there has to be a pension provided for railroaders and mandatory retirement.

And the Supreme Court came along and said, no question, rail is in interstate commerce, not a problem. And then they go on to say, but, famous phrase, “we do not think that,” and then they went on to say, the prescription of providing for early retirement and for a pension would either affect morale or safety. Now, that rationale has been rejected for the last 70 years except it has been taken up now by the Federalist Society, by you in your speech, by some of the rulings I want to get to with you, and by the Supreme Court.

So my argument is not that you have an irrational judgment about these things. My problem is that you think like these guys do, you are going to be on the Circuit Court of Appeals, and I am very worried about that, to put it to you straight up, bluntly.

Now, since I used probably half my time so far, I am going to get into this in more detail, but let me begin with you, if I may, and work with the least consequential question that I have for you, and that is matters relating to the Takings Clause. You again have pre-saged your colleagues on the District Courts and your views on the Takings Clause, which has been used by property rights advocates who use it to threaten a wide range of health—in my view, threaten, or render unconstitutional, a wide range of health, safety, and environmental protections.

In *Utility Real Estate v. Hudson*, you held that the Coal Industry Retiree Health Benefit Act, a law passed in 1992 to enforce the coal industry's promise to provide coal workers with lifetime health benefits, commonly known as the Coal Act—and I am from Scranton, Pennsylvania, and I understand the Coal Act—was unconstitutional. Under the Act, each retiree's benefits were paid by the company for whom the coal worker was most recently working. Even though various courts held that the Coal Act was more like a tax than anything else, you found that it violated the Takings Clause. After the Third Circuit disagreed with you, you reversed your opinion.

Subsequently, however, the Supreme Court issued a very confusing opinion, *Eastern Enterprise v. Apfel*—I think I am pronouncing it correctly—in which four justices said the Coal Act violates the Takings Clause. Four said the Coal Act is a fine. And one justice says the Act does not violate the Takings Clause, but it unconstitutionally denies substantive due process. So it is still a live issue even after the Third Circuit case law on the issue.

What are your current views on the constitutionality of the Coal Act? Does it violate the Takings Clause, and if so, why does it violate the Takings Clause? I am not going to take time to explain the Takings Clause to everybody, but you and I know what we are talking about. At least, I hope we do.

Judge SMITH. I understood, Senator. First of all, let me address the *Unity Real Estate* case because—

Senator BIDEN. No, do not do that. You can get back to that. Please respond specifically to my question, if you could. My time is up. What I will do is I will come back. I have got a lot of questions, so this is going to go into the event and so I have plenty of time.

Senator FEINGOLD. All right, Senator Biden.

Senator Specter.

#### **STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

Judge Smith, you may—if I might have your attention, Senator Biden, before you walk out, Senator, I just want to say to Judge Smith he might not have to decline to answer questions on ground that matters may come before him because your time is expiring.

Senator BIDEN. That is true, but the day is long and we are the majority right now. [Laughter.]

Senator SPECTER. The day may be long, Senator Biden, but not as long as our train rides from Washington to Delaware, where I

will have a chance to tell Senator Biden more about you, Judge Smith.

I want to take part of my ten minutes on this round to introduce a number of people who are here in your support, Judge Smith. You did not do so, but I think it is relevant to the committee to know the number of people who have come from Pennsylvania to support you here.

We have Congresswoman Melissa Hart, who has already been introduced, and Congressman Bill Coyne, who has already been noted as having been present.

We have former Circuit Judge Tim Lewis, who is here. Tim, would you stand? He was a judge on the Western District Court and later on the Court of Appeals for the Third Circuit. We have Professor Ken Gormley from Duquesne University School of Law, author of a distinguished book, Archibald Cox: Conscience of Nation. We have Ms. Amy Greer, president of the Allegheny County Bar Association, partner in the distinguished Pittsburgh firm Klett, Rooney.

We have Mr. Paul Titus, former chair of Senator Wofford's judicial nominating commission, of counsel to the distinguished law firm Schnader, Harrison, Segal and Lewis. We have Ms. Cynthia Reed Eddy, chair of the Judiciary Committee's Woman's Bar Association of Western Pennsylvania and partner in the distinguished firm Johnson and Eddy. We have Ms. Maureen Kelly, board of directors of the Pennsylvania Legal Services, from Babst, Calland, Clements and Zomnir, another distinguished firm.

We have former U.S. Attorney for the Western District J. Alan Johnson, partner in the also distinguished firm of Johnson and Eddy. We have Mr. Frederick Thieman, former U.S. Attorney for the Western District of Pennsylvania, partner in Thieman and Kaufman. Mr. Harry Litman, immediate past U.S. Attorney for the Western District of Pennsylvania, Litman Law Firm.

We have Mr. William Manifesto, member of the Pennsylvania Supreme Court's Criminal Procedural Rules Committee and a partner of the Manifesto Law Firm. Mark Rush, counsel for the trustee, Richard Thornburgh, in the case of SEC v. Black. Dr. William Miller, superintendent of the Tyrone area school district. Ms. Christine Wichers, partner of the distinguished firm Choate, Hall and Stewart.

We have others who have asked that their support be noted for the record, a former Attorney General and Governor Dick Thornburgh; United States District Judge Donetta Ambrose; Robert Byer, a former judge of the Commonwealth Court; and a very important recommendation from the Chief Judge to the Third Circuit, Edward Becker, one of America's most distinguished judges; and the support of Lieutenant Governor Robert Jubelirer, who, as I noted earlier, has known you for, I believe, your entire life.

Judge Smith, following up on the question which Senator Feingold asked you, did anyone from the Judiciary Committee alert you to or raise the question that the trips which you made should have had a value attached to your financial disclosure statement?

Judge SMITH. I do not believe so, Senator Specter.

Senator SPECTER. Did anybody from the Department of Justice raise that issue with you?

Judge SMITH. I do not believe so, Senator.

Senator SPECTER. In your reading of the applicable rules and regulations, did you note any requirement that you itemize the value?

Judge SMITH. I believe at all times that I was meeting the requirements and the guidelines provided for filling out our annual ethics disclosure form.

Senator SPECTER. You checked those rules and you thought you were meeting the guidelines?

Judge SMITH. I did.

Senator SPECTER. Judge Smith, there has been a question raised about a reversal rate and I would like to make a part of the record a document which summarizes that. We are on a crowded schedule and there are many people who are going to be heard after you, and in a few minutes, Governor Schweiker is going to be at a delegation meeting with the Secretary of Transportation and I am going to have to go to that meeting and battle for some highway funds for Pennsylvania. We have Blair County entirely paved with Congressman Schuster, but we are going to have to do some other paving, so I am going to have to attend that meeting. [Laughter.]

Senator SESSIONS. Save a little for Alabama.

Senator SPECTER. But these statistics show that you had 5,298 closed cases. Five-hundred-and-twenty-six cases were appealed to the Third Circuit. You have been reversed 53 times. On 12 of those occasions, you were reversed in part and affirmed in part on complicated matters. So your reversal rate is at approximately ten percent of the appeal cases and the reversal rate is one percent of the closed cases. And while you were reversed 29 percent of the time in your first year on the bench, 1989, your reversal rate declined so that in 2001, you were reversed less than six percent of the time, and overall, your reversal rate is less than the Third Circuit reversal rate of 11.7 percent. May I have this entered in the record, Mr. Chairman?

Senator FEINGOLD. Without objection.

Senator SPECTER. Do those statistics sound right to you, Judge Smith?

Judge SMITH. They do, Senator. I have——

Senator SPECTER. I do not want that to be a leading question, but we cannot go through it year by year and case by case.

Judge SMITH. I understand, Senator. They sound correct to me as I have reviewed them personally in the past.

Senator SPECTER. There has been an issue raised about a complicated case involving an allegation of late recusal on your part, and I am going to give you an opportunity in a moment to discuss the matter yourself. I ask unanimous consent, Mr. Chairman, that an op-ed piece by former Attorney General and Governor Dick Thornburgh be included in the record.

Senator FEINGOLD. Without objection.

Senator SPECTER. Governor Thornburgh was the trustee in this case and has intimate knowledge, and getting right to the heart of the matter, Governor Thornburgh, in supporting your nomination, noted in his op-ed piece that over 100 Democrats and Republicans have signed letters of support, and then getting to this case, he served as trustee for the defrauded schools and had a fiduciary duty to safeguard their funds. Your wife was an employee of Mid-

State Bank and you had some stock or financial interest which you will have a chance to comment about.

But Governor Thornburgh notes that Mid-State was not a party to the case and that you issued an initial order before recusing yourself distributing 50 percent of the frozen funds to the defrauded school districts on an interim plan which was proposed by Governor Thornburgh as trustee and the Securities and Exchange Commission. That initial order was entered while the case proceeded.

This is Governor Thornburgh writing. "When Judge Smith later received information that Mid-State could in the future conceivably play a role in the litigation, out of excessive caution, he immediately recused himself *sua sponte*," meaning on your own, "without being asked by either party." And going on, "Judge Donetta Ambrose, who obtained the case after Judge Smith's recusal, agreed," that "nothing that occurred between this order and Judge Smith's recusal days later benefitted Mid-State Bank." The U.S. Attorney's office never sought recusal and defense counsel did not seek recusal until four months later, when Judge Smith immediately recused himself.

After you have been on this committee a while, Judge Smith, you learn to use up all the time until you have to yield the floor for a witness, and my time is about up, and now on the committee's time, will you explain that case and what you did and why your submission is that there was no breach of ethics?

Judge SMITH. Thank you, Senator Specter. The case of SEC v. Black was filed, I believe, on September 27 of 1997 and it is a case that would have been filed in the Johnstown bailiwick, which is where I sit as the only judge. Because I was unavailable that afternoon, it and its emergency motions went to the motions judge, Judge Standish. Judge Standish at that time entered the orders proposed by the SEC, which were to freeze the assets of Mr. Black and his businesses and to appoint a trustee.

The case first came to my attention, then, I believe on September 30, and in the review of the papers to the case that I gave at that time, it was obvious to me that Mr. Black was the defendant, as were several of his enterprises, and that in the complaint itself and also in a declaration filed by someone with the SEC, Mid-State Bank was a depository. That was how I read those papers at that time. My wife is an employee, or was at that time, I should say, is no longer, an employee of Mid-State Bank and later at Keystone Financial, and yes, we were shareholders and are at this time of the succeeding organization. Mid-State Bank and Keystone Financial no longer exist.

I deemed at that time that as a mere depository, that was not sufficient basis to recuse, that it did not implicate the mandatory recusal provisions of Section 455(b) and I also did not think at that juncture that I was required to recuse under 455(a). I was also satisfied that Governor Thornburgh, acting as trustee, had fully withdrawn his authority as a fiduciary the power to control all of these assets and to see that they were properly secured and that he would do so. He was also authorized to place those monies in another institution and was authorized to provide to the court a 30-day re-



port. So I looked to the trustee to provide information to me along the way with respect to this lawsuit.

That interim report was filed and filed on October 27. It unfortunately was filed very much at the last minute before a hearing that had been scheduled, a hearing which, among other things, was to approve a recommended distribution, recommended by both the trustee and by the SEC to the various school district victims. I read the report immediately prior to the hearing. I was also aware that these school districts were alleged victims at that time. The trustee was making no determinations as to anyone's liability or fault or wrongdoing, but what was clear was that the money belonged to the school districts.

And Governor Thornburgh, as fiduciary, along with the certified public accountants and other employees he had hired to carry out his work, had determined that the most appropriate step to take at that time to alleviate the financial circumstances of these victim districts was to provide them with 50 percent of their monies. That distribution was proposed to me by him jointly with the SEC and I approved it.

It was apparent during the hearing we had that morning, on the 27th, that there was dire need. I recall one of the representatives or lawyers for the SEC saying that some of the school districts were within a day or days of being unable to make bond payments with all of the financial implications that might flow from that. I believe there were other school districts that made me aware of the fact that they might be unable to make payment just on their regular bills.

So with that information and relying upon, looking to the fiduciary, the court-appointed trustee and the joint recommendation of him and the SEC, I approved that interim distribution.

I also, at the same time, really, conducted a hearing that day on a request by Mr. Black for certain living expenses and for attorneys' fees, interim attorneys' fees. The interim attorneys' fees request was turned down. It was clear under the law he had no such right and I made a determination as to certain, what I thought were modest living expenses that he would be entitled to because all of his assets, not only his entities, but as I understood it, all of his personal assets were tied up at that time. All that, I did, again, with the understanding, with my belief that Mid-State Bank was nothing more than a depository.

I ruled on the Black disbursement of expenses, I believe, on October 30 and wrote that memorandum myself. I had then during the ensuing days, that is following the 27th and during the course of the preparation of this memorandum, order with respect to Black's expenses, occasion to spend more time with Governor Thornburgh's report and to spend more time, also, with its attachments. It became—

Senator FEINGOLD. Judge Smith, I am going to be asking you some additional questions about these matters later. You will have more chance to discuss them. If you could possibly summarize at this point.

Judge SMITH. All right. I determined, again, that at that point in time, I could see, and I read nothing in the report suggesting liability or fault on the part of Mid-State Bank, but I became con-

cerned. I became uneasy by the repeated mention of Mid-State as a depository. I could foresee the prospect of their future involvement through witnesses, through records, and it seemed to me that the most appropriate course at that point would be to recuse under 455(a) and I did so on the 31st.

Senator SPECTER. Mr. Chairman, I think summarizing is fine, but I want to be sure that Judge Smith feels he has adequately covered the matter before he terminates at this point. Have you adequately covered the matter, Judge Smith?

Judge SMITH. I think that adequately covers that aspect.

Senator SPECTER. Thank you.

Senator FEINGOLD. Thank you, Senator Specter. Thank you, Judge Smith.

Senator EDWARDS.

Senator EDWARDS. Thank you, Mr. Chairman. Good morning, Judge. How are you?

Judge SMITH. Good morning, sir. Thank you, sir. Fine.

Senator EDWARDS. I apologize. I am going to have to try to be brief because I have to preside at 12 o'clock and I have to get over there, so bear with me.

I know that you have already been asked about your 1993 speech regarding the power of Congress to regulate under the Commerce Clause. I have two or three specific areas I want to ask you about because your speech is troubling to some of us and I just want to see what your thoughts are about it.

One example I wanted to ask you about is I am a sponsor of a bill that deals with terrorist hoaxes, an example of somebody who puts an envelope on a coworker's desk and says, "This envelope contains anthrax," something in that sort of category, where you could certainly argue about the impact that that may have on commerce. Can you comment on whether you believe we have the power, we, Congress, have the power under those kind of circumstances, similar circumstances, to regulate terrorist hoaxes?

Judge SMITH. Absolutely, Senator. Congress has vast power under the Commerce Clause to legislate in all sorts of areas and I never intended by my speech to suggest anything to the contrary. Furthermore, I am certainly well aware, as is any Federal judge, of the strong presumption of constitutionality that attaches to any legislative enactment of Congress and to the findings that Congress makes in any legislative enactment.

Senator EDWARDS. Okay. Can I ask you about a couple of other specific areas very quickly, please. So your answer on that one was, absolutely, Congress would have that power?

Judge SMITH. Yes, sir.

Senator EDWARDS. Second, drug use often takes place within a private home. But, of course, we regulate drug use under the Commerce Clause. Do you have any question about our power to regulate and criminalize drug use, even though some would argue that is a State function, our power to do that under the Commerce Clause?

Judge SMITH. I have no questions about that.

Senator EDWARDS. Under that specific example, people who are using drugs within a private home.

Judge SMITH. I have no question or hesitation about that because I have seen those cases and had those cases before me, Senator.

Senator EDWARDS. And the third specific area I want to ask you about has to do with environmental laws and endangered species specifically. There certainly could be circumstances where a particular species that we may attempt to protect under an endangered species law under the Commerce Clause may, in fact, exist only within a particular State or within the boundaries of a particular State. Would you have any question about our power to regulate under the Commerce Clause under those circumstances?

Judge SMITH. To regulate endangered species?

Senator EDWARDS. Yes.

Judge SMITH. I have no question about that, Senator.

Senator EDWARDS. Even if the particular species involved only exists within a particular State?

Judge SMITH. I have no question about your authority to do so.

Senator EDWARDS. Thank you, Judge. That is all I have.

Senator FEINGOLD. Thank you, Senator Edwards.

Senator Kyl.

**PRESENTATION OF DAVID CHARLES BURY, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA BY HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA**

Senator KYL. Thank you, Mr. Chairman.

I would like to, as a matter of personal indulgence, take a moment in my time to introduce an Arizona District Court nominee who is here. Particularly given the suggestion that we were going to be here all day and all night, and would maybe ask that the Chairman consider possibly, if those three District Court nominees would not take a great deal of time, accommodating their interests, given travel plans and the like. You might want to—

Senator FEINGOLD. Let me just say that Senator Biden has indicated that he has more questions. I would like to ask another round of questions. But what I think we may do is when we complete this round of questions and whoever wants to do the second round is that we will move to the second panel, without excusing Judge Smith so Senator Biden can come back and ask him some more questions.

Senator KYL. I know they would appreciate that very much and that is a good accommodation.

The nominee from Arizona is David Bury and he is here with his wife and his daughter and I just wanted to say a few words about him since I did not take the dais at the time the other Senators were here.

He is a graduate of Oklahoma State University and the best law school in the world, my alma mater, the University of Arizona College of Law, and is a founding partner in a firm in Tucson. He has practiced for 34 years as a trial lawyer in the private practice of law. He tried cases in most of the counties in our State as well as, of course, in the Federal Courts.

His clients have included private citizens, lawyers, doctors, insurance companies, corporations, Pima County, where he lives, as well as the State of Arizona, and he has defended medical and legal malpractice cases, product liability, and construction site cases,

governmental entities and false arrest cases, assault and battery, U.S. Code Section 1983 actions, as well as a lot of others. He has also defended school teachers and school districts.

He is a fellow in the prestigious American College of Trial Lawyers and an advocate of the American Board of Trial Advocates. He has also been listed in *The Best Lawyers in America* for the last seven years.

I will not recount all of the various commissions on which he has served except one. He has been a lawyer representative to the Ninth Circuit Judicial Conference and served on the Disciplinary Committee of the State Bar of Arizona during his time as a practicing attorney.

Senator McCain wanted me to note that he could not be here this morning but asked that I express his strong support for David Bury's nomination, as well.

I appreciate that and did simply want the members who are here to know how strongly I support David Bury's nomination. He will make a superb Federal District Judge in Arizona.

Now, with that, Mr. Chairman, let me just make two comments, one, and I wish Senator Biden were here—if he is out there, I am going to give him a little bit of warning I am going to say something here, but I will tell him this personally if he is not here.

First, with respect to your concerns, Senator Feingold, you are one of the few Senators who probably has appropriate standing to raise the issue with regard to junkets that you did, and I had that noted before you and Senator Hatch had your little colloquy, but you are one of the more serious Senators, so I say this with all respect to the issue that you raised.

I would hope that with regard to the standards that we apply to judges attending continuing legal education conferences that even though you might have in mind making those standards more strict or enhancing them—I have not seen your legislation—that current judges would be judged based on the existing requirements of judges and that if they have complied with those requirements and have not abused their position, that they not be judged on some higher standard that we may want to impose in the future.

Secondly, if the concern is with junkets, I would suggest that a much more fertile area for our reform would be Congressional junkets. I know from personal experience that we take a pretty liberal view of those things and I do not think with a lot of the trips that are taken we could answer with the same degree of certainty that Judge Smith did about getting more out of it from a continuing legal education point of view than a recreational point of view. That is not always the case, but it certainly frequently is.

To the concern that Senator Biden raised, it seems to me that his problem, Judge Smith, seems to be that you might rule the way the Supreme Court is tending to rule these days, especially in Commerce Clause decisions. Given the fact that we demand that nominees tell us in response to our questions that you would apply the U.S. Supreme Court's interpretation and not make up the law yourself, it seems to me that it would not be a disqualification that you are tending to view the law the way the Supreme Court appears to be viewing it these days.

I will bring this up with Senator Biden when I speak with him, but I would hope that he would not take the position that he would be voting against a nominee because they would not be joining the dissenting group of U.S. Supreme Court justices in Commerce Clause cases. I do not necessarily expect you to respond to that, but I do think we have to be careful about how we apply our own personal views or personal political views to the attitudes of nominees.

Let me just ask you, as far as you can, will you apply the law enunciated by the United States Supreme Court in all rulings if you are confirmed to the Circuit Court of Appeals?

Judge SMITH. I always have and I always will, to my utmost, Senator Kyl, follow the precedent that binds me, whether it be the precedent of the Supreme Court of the United States or of the Court of Appeals.

Senator KYL. Thank you very much, and thank you, Mr. Chairman.

Senator FEINGOLD. Thank you, Senator Kyl.

We will now begin the second round of questions for the nominee. Returning to the judicial seminars just briefly, Judge, are you aware that Bethlehem Steel was a funder of LEC during 1992 and 1993 when you attended two LEC seminars and that you sat as the judge in two age discrimination cases in which Bethlehem Steel was a defendant during that time?

Judge SMITH. I was not aware of that, Senator Feingold. Mr. Chairman, my understanding, and I have checked on this, is that George Mason will not release its contributors. They are not available. That is, individual contributors are not available. So I did not and would not have known of that.

Senator FEINGOLD. Would you agree that there is at least an appearance problem with your going on these trips funded by defendants in the cases you are hearing?

Judge SMITH. I would agree that with that knowledge, that creates an appearance problem.

Senator FEINGOLD. If you are confirmed to the Third Circuit Court of Appeals, will you continue to attend judicial seminars sponsored by organizations such as FREE and LEC?

Judge SMITH. Mr. Chairman, I have not attended a FREE seminar since 1998. I have not attended an LEC seminar since the spring of the year 2000. I have been well aware of the increased attention being given to this issue by you and by Senator Kerry and the ongoing discussion among the Judicial Conference. It concerns me greatly.

I want to be very careful in the answer that I give you because I do not want to foreclose participation in something in the future that I would deem to be appropriate. But under present circumstances, I am troubled by the amount of attention that has been given to these seminars. I am also troubled by the issue that you have just raised. And until I can be satisfied that, indeed, funding does not come from a source that is somehow implicated in a case before me or with a likelihood of coming before me, the answer is no, I will not attend them.

Senator FEINGOLD. Thank you, Judge.

I had indicated that I would ask you some more questions about the Black case and related matters, some more specific questions.

You note in your letter to the committee that Mid-State Bank was mentioned in the SEC complaint. You say it was mentioned as nothing more than a repository for some of the assets involved in Black's fraudulent scheme. Now, even if the involvement was that small, why did you not at least disclose your financial interest to the parties immediately upon learning that Mid-State Bank was involved in the proceeding?

Judge SMITH. I did not see a reason for it at that point, Senator Feingold, and beyond that, I was awaiting the report of the trustee within the 30-day period. That was my main concern. And while I know this may not sound like an adequate justification, but it was, of course, not the only case that I was dealing with at that time, and so the procedural status of it was such that the monies were frozen. They were unavailable to Mid-State. They were in the hands of the trustee who had fiduciary responsibilities over them. I was thereby awaiting his 30-day report which would, hopefully, shed light on whatever next steps needed to be taken.

Senator FEINGOLD. You obviously did not forget that you owned over \$100,000 in Keystone Financial stock?

Judge SMITH. No, sir, I did not.

Senator FEINGOLD. You stated in your letter that Mid-State was not a party to the litigation and was mentioned only once in the SEC's complaint. But the complaint attaches a declaration from the SEC auditor who discovered Black's wrongdoing and the declaration mentions Mid-State five times. It also includes a schedule of assets that lists Mid-State Bank repeatedly. Is it your testimony that you believe Mid-State Bank played such a minor role in this case that your financial interest in it was irrelevant?

Judge SMITH. I continued to believe at that point, Senator, that my investment as well as my wife's employment at Mid-State Bank were such that the role of the bank as a mere depository, which is what I saw it, was not sufficient to trigger the requirements of the recusal statute.

Senator FEINGOLD. Did you have any single investment at the time that was greater than your investment in Keystone Financial?

Judge SMITH. My government thrift plan was probably greater. My wife's 401(k) was probably greater. My house was undoubtedly greater.

Senator FEINGOLD. Those three items?

Judge SMITH. To the best of my knowledge.

Senator FEINGOLD. In SEC v. Black, you issued at least one ruling that specifically dealt with Mid-State Bank, pooling assets that Black had placed at Mid-State with those that were at other banks. Even if you did not realize that Mid-State may have been a participant in the fraud, given your financial interest in Mid-State Bank, why did you not view this particular order as presenting at least the appearance of a conflict of interest?

Judge SMITH. Because I, at that point, did not see any basis by which Mid-State was implicated. Once again, Mr. Chairman, they were not a party. Not only was the money frozen, but by that point, the monies had been moved to another depository and were no longer in the hands of Mid-State Bank. Further, there was no suggestion in the report of the trustee of liability on the part of anyone. So I could not see any basis, again, for Mid-State's status to

have changed. That, I think, order that you are referring to is the September 27 order of distribution, which was recommended jointly by the SEC and the trustee.

Senator FEINGOLD. According to Mark Rush of Kirkpatrick and Lockhart, who is representing the trustee, former Attorney General Richard Thornburgh, the trustee informed you on October 27 in a meeting in chambers that there was information being developed that might change his view as to Mid-State's involvement in the case, and at the time, you indicated an intention to consider recusing yourself based on your wife's employment. Yet you subsequently issued more orders in the case and did not actually recuse yourself until October 31. Would you like to explain why?

Judge SMITH. Mr. Chairman, I have a recollection of having met with General Thornburgh and with Mr. Rush on the 27th. I cannot recall, quite honestly, if it was before or after the hearing. I believe it was probably before the hearing and probably at the point when they presented the report to me. I was still satisfied at that point that there was no information, no specific information presented to me that was sufficient to suggest a basis for recusal.

Senator FEINGOLD. Well, when the recusal occurred, you said that, "The wife of the undersigned judge is an officer of the aforementioned bank," and concluded that, "The relationship of the undersigned's wife to the aforementioned bank could cause a reasonable observer to question the impartiality of the undersigned judge." You did not mention your significant investments in the bank. In your letter to the committee, you say you had no obligation to give a reason, yet you discussed your wife's employment. Why did you not mention your financial interest?

Judge SMITH. I did not mention the financial interest because it was, again, my view of the case that Mid-State was not a party whose liability was at issue. I was continuing to look at this case as Mid-State, if playing a part, and which upon recusal it certainly looked to me as if they would, would be as a witness, as a party that would be required to produce documents, as an entity whose employees or officers might have to appear as witnesses.

I do want to emphasize for the benefit of the members of the committee and for the record that my wife's employment was in a completely different part of the bank and had absolutely nothing to do with the transactions that were at issue here.

Senator FEINGOLD. Fair enough. A couple of years later, in 1999, you presided over the criminal case that arose out of John Gardner Black's fraud, *United States v. Black*, after having recused yourself in 1997 in the civil case. By this time, Mid-State Bank had been sued repeatedly in this matter. Why did you feel it was proper to preside in this case when you had recused yourself in the related case?

Judge SMITH. The case of *United States v. Black* was originally filed and placed with Judge Ambrose of our court. According to the docket, she met with counsel and the docket indicates that counsel and the court agreed that this case was unrelated to *SEC v. Black*. Because the case arose out of the Johnstown vicinage where I am the only judge, Judge Ambrose transferred the case to Johnstown, where it became my case.

My first contact with it, to the best of my recollection, Senator, was when I met with counsel on the case following arraignment. I believe the defendant was arraigned, and as a courtesy to counsel, I sat down with them in my chambers because there was a suggestion from both sides that this case would require extensive discovery, more discovery than is ordinarily the case in a criminal case, and we had an informal discussion at that time.

My specific recollection is that I made known to them at that time my prior recusal in the case of SEC v. Black. I believe they already knew that. Certainly, Mr. Black already knew that and my recollection is his attorney knew it, as well, as did the prosecutor. But I brought that to their attention and at that point in time, because this was a criminal case which did not involve civil liability, because it was a case that only involved criminal liability on the part of Mr. Black, I deemed that I could proceed with it and simply issued a discovery schedule, which I believe permitted discovery for approximately four months.

At some point during that discovery process, counsel for the defendant filed a motion for recusal, which I granted immediately, again, for the same grounds.

Senator FEINGOLD. Senator Hatch, to avoid the necessity of a whole another round, I am just going to ask one more question and then turn to you.

Senator HATCH. Sure.

Senator FEINGOLD. Your recusal order in the criminal case stated that you had been aware of the potential conflict from the beginning of the case. In your letter to the committee, you state, "When I initially met with counsel to schedule discovery for the criminal case, I reminded them of my earlier recusal and my wife's employment at Mid-State Bank. But neither the United States Attorney's office nor Black suggested that I recuse myself." Did you inform the parties of your financial interest in Mid-State Bank? If not, why not?

Judge SMITH. I do not have a recollection of it, Mr. Chairman. Probably, I did not, but I do not have a specific recollection of that.

Let me say, because I would like to make this statement, that with respect to United States v. Black, with the benefit of hindsight, I wish I had recused earlier. But I did recuse and I did it because I knew it was the right thing to do.

Senator FEINGOLD. I appreciate that answer, Judge.

Senator Hatch?

Senator HATCH. Thank you, Mr. Chairman.

Judge Smith, Senator Biden asked you about the case of Unity Real Estate v. Hudson in which you faced a constitutional challenge to the Coal Act. But ultimately, you did not find the Coal Act unconstitutional. You did not finally find that. This was an injunction case. Is it not true that you merely enjoined enforcement of the Coal Act pending resolution of the case on its merits and your ultimate decision in Unity was upheld on appeal, was it not?

Judge SMITH. That is correct, Senator. The reason I wanted to discuss Unity is it is a rather extraordinary case. What I did, as you have pointed out, was to issue a preliminary injunction, and, in fact, that followed a recommendation to me from a magistrate judge to whom the case had been assigned. He rendered a report



and recommendation to me which upheld the substantive due process but which found a potential takings violation as to this small company, Unity Real Estate. I then wrote my own opinion but came to the same results.

This was a preliminary injunction involving a very small company, and what was, I believe, unique about this case is I think it had about two employees, an extraordinarily small net worth, and both sides in the case, both sides stipulated that if the reach-back for this company applied, it was immediately bankrupt. So that seemed to me to be an appropriate basis for preliminary injunctive relief.

But as you point out, Senator, when the case developed, when it returned to me on motions for summary judgment, with the benefit of additional discovery or with the benefit of discovery, I upheld the Act, and let me emphasize that the takings determination at the preliminary stage was merely an "as applied" takings determination as to Unity Real Estate.

But you are correct. I found neither a takings violation nor a substantive due process violation in my ultimate dispositive motion opinion and was affirmed.

Senator HATCH. On appeal?

Judge SMITH. On appeal.

Senator HATCH. Judge Smith, some have alleged that you should have known from the complaint and declaration filed in SEC v. Black that Mid-State was culpable, despite the fact that it was not named as a defendant in the case. Now, my review of these pleadings leads me to a different conclusion. It looks to me that it is a real stretch to claim that the complaint and declaration put anyone on notice that Mid-State was actively involved in or even complicit in the fraud.

In fact, during an interview several days after the trustee's report was filed, the court-appointed trustee himself said that it was too premature to determine any culpability by Mid-State. Referring to a discrepancy in funds reported by the bank, the trustee said, "I would not characterize it as wrongdoing at this point. We clearly want to get some answers as to how that disparity came to exist."

Now, the trustee made that statement on the very day that you recused yourself from the case, so I find it difficult to understand how any critics, how any of them are saying that you should have known prior to that date that Mid-State was culpable. Instead, it seems to me that you should be commended for recusing yourself out of an abundance of caution instead of, as some are doing it, instead of castigating you for it, being castigated for it.

Now, most of the criticism that I have seen of your handling of SEC v. Black resolves around the distribution order that you issued. This order distributed roughly half of the assets frozen by a previous judge's order to the victim school districts in the case, is that right?

Judge SMITH. That is correct.

Senator HATCH. Okay. Now, is it not the case that the SEC, and more significantly, the independent trustee for the victim school districts both requested this order?

Judge SMITH. That is correct, Senator.

Senator HATCH. Did any party oppose the request?

Judge SMITH. The—several of the school districts sought intervention along the way up to the ultimate distribution of that amount. I believe there were several school districts who wanted some alternate distribution. Understand, at this point in time, as I have described, what the school districts were facing were large amounts of money that belonged to them that was tied up that thereby precluded them from even potentially carrying on their operations and everybody wanted all their money now.

Senator HATCH. But my point was, did any party oppose the request by the—

Judge SMITH. I do not recall that anyone refused the 50 percent distribution. I cannot recall that any party opposed the actual distribution of the 50 percent. I cannot recall that, Senator.

Senator HATCH. I find it hard to follow the logic of the argument that some have propounded that you intended to benefit Mid-State Bank when your order was jointly requested by the trustee for the victims and the prosecuting agency. That is my point, and I am satisfied that your issuance of the order involved absolutely no wrongdoing and I think anybody who fairly looks at it would have to conclude the same.

But let me go a little bit further here. Some have criticized your method of recusal in SEC v. Black. Now, these critics maintain that it was not enough for you to recuse yourself *sua sponte*. Instead, they argue that you should have disclosed your ownership of stock in Keystone Financial, the parent company of Mid-State Bank, and, of course, you have answered those criticisms.

But I would like to point out that in the case of Hampton v. City of Chicago, the Court of Appeals noted that a judge “is under no obligation to provide a statement of reasons for recusal.” The court continued, “in addition, a District judge may disqualify himself on his motion since, for example, he is probably best informed about his minor children’s financial interests but may choose not to identify these interests in such a context.” The court concluded that the judge could have chosen not to file a memorandum explaining his reasons for recusal along with his recusal order.

Now, your actions in SEC v. Black present an analogous situation to that described by the court in the Hampton case. You chose to cite as a ground for recusal your wife’s employment by Mid-State when, in fact, you did not need to cite any grounds at all. I find it ironic that some of your critics—I find it that your citation, rather, of some grounds for recusal would bring you under fire when you were under no obligation to cite any grounds for recusal in your order.

I also have to note that the criticisms of your action in Black v. SEC, these criticisms emanate primarily, if not exclusively, from a Washington-based special interest group. Those persons who were directly involved in the case have vigorously defended your actions, as far as I can see, is that correct?

Judge SMITH. That is my understanding, Senator.

Senator HATCH. For example, Judge Donetta Ambrose, your colleague on the District Court, inherited the case after your recusal. In a letter to the committee, Judge Ambrose writes, “There was never any suggestion by me or the Court of Appeals that Judge Smith acted inappropriately or unethically. Rather, he acted pru-

dently and cautiously and at a time when no one knew the extent of the involvement of any or all of the defendant's clients."

Now, regarding her ruling to release all of the frozen funds, Judge Ambrose explains, "My decision came only after seven months of investigation by the trustee. If I were presiding in October 1997, I would have ruled the same way Judge Smith ruled. The allegations of unethical conduct in the context of this case are without foundation."

Now, as Senator Specter has pointed out, the court-appointed trustee in the case, former Pennsylvania Governor and U.S. Attorney Richard Thornburgh concurred with Judge Ambrose's conclusion in an op-ed that appears in today's Pittsburgh Post Gazette. Mr. Thornburgh explained, "I served as the trustee for the defrauded schools and bore a fiduciary duty to safeguard their funds and I can say with front row, firsthand knowledge that Judge Smith acted with absolute integrity, independence, and honor."

Now, Mr. Thornburgh continued, "First, Mid-State Bank was not a party to the case and nothing at the outset suggested Mid-State was complicit in any fraudulent scheme. It was, therefore, unlikely that Judge Smith's wife, who worked in an unrelated part of the bank, would become a material witness. Since the complaint did not allege any wrongdoing by the bank holding the defendant's funds, any stock the Smiths owned in its parent company was immaterial. When Judge Smith later received information that Mid-State could in the future conceivably play a role in the litigation, out of an excess of caution, he immediately recused himself sua sponte, without being asked by either party. The actions that Judge Smith took prior to his recusal in the civil case did nothing to limit Mid-State's eventual liability, exposure, or impact the victims' rights of recovery."

Similarly—I know my time is up, Mr. Chairman, but if I could just finish—similarly, Mark Rush, who served as counsel to Trustee Thornburgh in SEC v. Black, he observed in a letter to the committee, "On October 27, 1997, and for that matter, on October 31, 1997, when Judge Smith recused himself, it was not known what Mid-State Bank's eventual involvement would be or would be determined to be. It is, therefore, clear that if the trustee and the investigators who were charged in conducting the forensic audit and the investigation were unaware beyond a developing suspicion of the extent and nature of Mid-State Bank's involvement prior to October 31, 1997, Judge Smith certainly would not have had that knowledge."

Now, the committee has also received letters in support of you, Judge Smith, from persons who represented school districts victimized by Mr. Black. Richard Finberg, who has served as plaintiffs' counsel in multiple litigations relating to Mr. Black and his company since 1997, advised the committee, "In sum, from our extensive involvement in this litigation, we are not aware of any impropriety or even appearance of impropriety on the part of Judge Smith and Judge Smith has made no rulings in these proceedings that would even hint that he favored Mid-State."

Another school district attorney, Ronald Carnivale, Jr., wrote the committee, "At no time did I believe that Judge Smith acted with respect to this case in any manner inconsistent with his usual high

degree of integrity, forthrightness, and insight. His recusal from the case and its transfer to Pittsburgh occurred in a timely way when the appearance of the potential conflict first became evident. Judge Smith's rulings in the case prior to his recusal were entirely appropriate," and I am just about through.

Yet another letter echoed these sentiments. This letter from Tyrone Area School District Superintendent William Miller. He declared, "At no time, in my opinion, did the Honorable D. Brooks Smith commit any impropriety in his handling of the case. Furthermore, when the possibility first arose, Judge Smith immediately recused himself from the case. As the Tyrone Area School District stood to lose over one-seventh of the total loss of \$71 million, I would have been extremely concerned of any impropriety and/or conflict of interest. At no time during his brief involvement in the case did I ever question the ethics, integrity, and judicial propriety of the Honorable D. Brooks Smith."

Finally, a recent Washington Post story quotes an attorney for the FCC in the Black case as having agreed that, "It was not clear at the time what role Mid-State Bank would play in the case."

So, Judge Smith, it appears that virtually everyone involved in the case agreed that you conducted yourself appropriately and ethically and my review of the matter leads to exactly the same conclusion.

Mr. Chairman, I ask that the letters to the committee in support of Judge Smith and the articles that I have cited be included in the record.

Senator FEINGOLD. Without objection.

Senator HATCH. Thank you, sir.

Senator FEINGOLD. Let me just be clear. I am not arguing that you are required to say why you are recusing yourself. What I am suggesting is that you had a duty to inform the parties of your financial interest in the bank, particularly when you are going to issue orders that would affect Mid-State's financial interest, and having not done that, I do not think it was sufficient to tell the parties in the criminal case that you had recused yourself. My sense is that you would have done better to have told them about your stock holdings.

At this point—

Senator HATCH. He had no obligation to do that. The fact is, he did and he did recuse himself when he realized that he should. That is the important point. And I did not find any fault with your questions. I thought they were good questions.

Senator FEINGOLD. Judge Smith, as I indicated, Senator Biden is still interested in asking more questions later, and at the suggestion of both Senator Biden and Senator Kyl, we will not dismiss you but ask you to come back later. I do not know the exact time yet. It will depend on the schedule. But we will try to let you know as soon as possible, but I would like to move to the second panel at this point.

Judge SMITH. Thank you, Mr. Chairman.

Senator FEINGOLD. Our next panel will be the three District Court nominees, Ralph Robert Beistline, David Charles Bury, and Robert Randall Crane. I want to thank all of you for being here and

congratulations on your nominations. I would ask you all to come forward.

Mr. Beistline, Mr. Bury, and Mr. Crane, will you please stand to be sworn. Do you swear that the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Judge BEISTLINE. I do.

Mr. BURY. I do.

Mr. CRANE. I do.

Senator FEINGOLD. I thank the witnesses. It is an honor to welcome you here today. We will begin with Ralph Robert Beistline, who has been nominated to the United States District Court for the District of Alaska. Mr. Beistline graduated from the University of Alaska and the University of Puget Sound School of Law and currently serves as a Superior Court judge for the State of Alaska presiding in Fairbanks.

I welcome you and ask that you take a moment to introduce members of your family or anyone else who may be here to support you today. If you have any opening remarks, this would be the time to make them.

**STATEMENT OF RALPH BEISTLINE, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF ALASKA**

Judge BEISTLINE. I thank you, Mr. Chairman. I have with me today my wife, Peggy, from Fairbanks, Alaska. I have five children. Four of them are attending college and are involved in exams and my youngest is a senior in high school. He had a choice of coming here today or taking part in a wrestling tournament. He had spent the last three months trying to make weight, and so the decision was not difficult. So I am here without children, but with the support of my wife.

Senator FEINGOLD. I think the committee can ratify his choice. [Laughter.]

Judge BEISTLINE. In terms of opening comments, I really do not have anything to say other than the fact that Senator Murkowski indicated that I came to Alaska when I was two years old. Actually, it was my grandfather that came to Alaska when he was two years old. My parents and I were both born in Alaska. Thank you.

[The biographical information of Judge Beistline follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. Name: Full name (include any former names used).  
ANSWER: Ralph Robert Beistline
2. Position: State the position for which you have been nominated.  
ANSWER: United States District Court Judge, Alaska
3. Address: List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
ANSWER: 101 Lacey Street, Fairbanks, AK 99701  
(907) 452- 9311.
4. Birthplace: State date and place of birth.  
ANSWER: December 6, 1948 in Fairbanks, Alaska.
5. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name, and business address(es). Please also indicate the number of dependent children.  
ANSWER: Peggy Ann (Griffin) Beistline. Peggy is a florist who owns and operates Daisy A Day Floral and Gift at 4001 Geist Road, Fairbanks, Alaska 99709. We have five children ranging in ages from 18 to 28. Three are dependents.
6. Education: List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
ANSWER: University of Puget Sound School of Law - 9/72-8/74  
Juris Doctorate Degree - August 1974.  
University of Alaska - 9/68-5/72  
B.A. Degree in May of 1972  
University of Colorado - 9/67-5/68 - No degree
7. Employment Record: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your

services. Include the name and address of the employer and job title or job description where appropriate.

ANSWER:

- (A) I served on the Alaskaland commission, a volunteer board for the City of Fairbanks, for over a decade ending in 1992 when I became a Superior Court Judge. I served briefly on the Board of Directors of Alaska Legal Services, a volunteer position, in 1992 but resigned to become a Judge. I am currently on the Executive Board of the Boy Scouts of America and have served in that capacity since 1990. It also is a volunteer position.
  - (B) On December 16, 1992, I became a Superior Court Judge for the State of Alaska in Fairbanks, Alaska, and have worked continuously in that capacity to present.
  - (C) In September 1975, I went to work for the law firm of Hughes, Thorsness, Gantz, Powell & Brundin, where I worked continuously until December 14, 1992. I was an associate with the law firm for three years and a partner for the last 14 years of my association with the firm.
  - (D) From December 1974 through August 1975, I worked as a law clerk for the Superior Court in Fairbanks, Alaska, clerking for Judges Taylor, Van Hoomisen, and Hepp. The address was 604 Barnette Street, Fairbanks, Alaska 99709.
  - (E) During law school (1974), I worked briefly as a law clerk for Burton Lyon, Esq. (deceased) in Tacoma, Washington. His address was 730 Fawcette, Tacoma, Washington.
  - (F) Between graduating from UAF in May of 1972 and beginning law school in August of 1972, I worked full time as a sales store worker at the Army Commissary in Fairbanks on Fort Wainwright, Alaska. My supervisor was David Dalrymple.
8. Military Service: Identify any service in the U. S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge.

ANSWER: I enlisted in the Army National Guard in Fairbanks, Alaska, in June 1970 and remained in the Guard until 1973 when I transferred to the Army Reserves in Seattle, Washington, while attending law school. In late 1974, I returned to Alaska after completing law school and enlisted in the Air National Guard in Anchorage, Alaska. I received an Honorable Discharge from each unit to which I was attached and upon my discharge in 1976 after completing my six-year obligation. I was a Sergeant at the time of discharge. My service number was 574204913.

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

ANSWER: N/A

10. Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conference of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

ANSWER:

- (A) Tanana Valley Bar Association - 1975 until present. I served as Secretary of the TVBA in 1976, Treasurer in 1977, Vice-President in 1978, and President in 1979.
- (B) Alaska Bar Association - 1975 until present. I served as a member of the Board of Governors of the Alaska Bar Association from 1985 through 1988. I was President of the Alaska Bar Association in 1986-87.
- (C) I was a member of the American Bar Association from 1975 to 2000.
- (D) In 1991-92, I was a lawyer representative to the Ninth Circuit Judicial Conference.
- (E) In 1991-92, I served on both the Alaska Civil Rules Committee and a Federal committee relating to revisions of civil rules. I have served on several occasions on Federal Magistrate selection committees and various local Bar Association committees.
- (F) In 1992 I served as a member of the Alaska Legal Services Board of Directors but resigned upon receiving my appointment to the bench.
- (G) In 1994 and 1995, I was President of the Alaska Conference of Judges and served as an officer for the two prior years.

11. Bar and Court Admission: List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

ANSWER: I was admitted to the Alaska Bar Association and the United States Federal Court for the District of Alaska in May of 1975. I was admitted to the United States Court of Appeals



for the District of Alaska in December 1976. My membership in each court remains active.

12. Memberships: List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Question 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

ANSWER: Other than my work with the Boy Scouts of America, I am not involved in organizations not mentioned in questions 10 or 11. I am, however, a member of the Pioneers of Alaska by virtue of my length of residence in the State and am a member of the University of Alaska Alumni Association by virtue of my graduation from the University of Alaska. Neither of these organizations practices discrimination in any form. While there has been some controversy regarding the Boy Scouts' policies relating to the qualifications of its leaders, this is not something that I have been involved with or that has been an issue in Fairbanks.

13. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or video taped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

ANSWER: In 1986-87 I was President of the Alaska Bar Association and wrote several "President Columns" in the Bar newspaper. Between roughly 1988 and December of 1992 I was editor of the Alaska Bar Association newspaper called the "Bar Rag." (I did not select the name.) As editor I wrote a regular column in the paper (quarterly), mostly of a humorous or professional nature. There was nothing controversial. I have attached hereto copies of the articles I wrote in this periodical. Furthermore, I have spoken frequently over the years at Bar Association and judicial functions, to the Fairbanks Chamber of Commerce, and to elementary, high school, and college classes in Fairbanks. Again, these were more educational and entertaining in tone and were not controversial in nature. I frequently speak extemporaneously and have not kept any notes of any of these presentations.

I did write a guest article on the impact of alcohol on the community which I have attached, as well as a human interest article that appeared in the paper.

14. Congressional Testimony: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

ANSWER: None

15. HEALTH: Describe the present state of your health and provide the date of your last physical examination.

ANSWER: I am currently in good health. My last physical was in August of 2001.

16. Citations: If you are or have been a judge, provide:

(a) a short summary and citations for the ten (10) most significant opinions you have written;

(b) a short summary of and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court;

(c) a short summary of and citations for significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

ANSWER: (a) Ten significant opinions representing a cross section of the work performed. (Copies attached.)

Toney v. Fairbanks North Star Borough School District, Bd. of Education

4FA-92-1027 Civil

Decision upholding School Board's decision to terminate tenured teacher for failure to disclose past improprieties in application.

State of Alaska v. Manfred West

4FA-S94-3882 Cr.

Significant in that it involved the man who murdered Joe Vogler, a popular Alaskan and prior gubernatorial candidate. Addresses circumstances under which one can withdraw a plea under Alaska law.

State of Alaska v. Michael Samson

4FA-94-3496 Cr.

Typical of cases involving the proximate cause requirement for search warrants.

State of Alaska v. Willie Jackson

4FA-S94-3526 Cr.

Typical of cases raising issues as to the scope of search pursuant to a search warrant.

Texaco Refining and Marketing, Inc. v. Alaska Pacific Assurance Company

4FA-98-1514 Civil

Example of the complexity of some civil cases that I have addressed that involved insurance and contract issues.

Interior Alaska Airboat Association, Inc. v. State of Alaska Board of Game

4FA-96-1494 Civil

Illustrates the nature of some of the public interest and fish and game cases I have decided.

Baker v. John

4FA-95-3103

This is included as an example of the complicated Indian law issues the we face. In this case the Alaska Supreme Court extended tribal court jurisdiction in child custody disputes.

Western Star Finance, Inc. v. Alaska Western Star, et al.

4FA-99-1185 Civil

Illustrates the rather complicated business issues presented and resolved by the court.

Schumacher vs. Dardova

4FA-97-312 Civil

Illustrates the very difficult domestic cases addressed by the court and the factors considered in determining child custody.

Citizens for the Advancement of Delta vs. Pamela Ellis, et al.

4FA-00-737 Civil

Addresses some the legal issues raised in a re-call election.

Wilson Sam vs. Interior Regional Housing Authority

4FA-99-2343 Civil

Illustrates some rather complex wage and hour issues that I have recently had to address.

ANSWER: (b) Cases reversed. I have handled many cases over the last nine years. Most are not appealed. Of those appealed, some are dismissed prior to resolution or merely remanded for further findings. Listed below are as many of

the cases as I have been able to locate where my decisions were reversed. (Copies attached.)

R.R. v. State

919 P.2d 754 (Alaska 1996)

Supreme court reversed finding that State had made reasonable efforts to reunite mother with child in termination case.

In Re Estate of Evans

901 P.2d 1138 (Alaska 1995)

Addressed the issue of whether a claim in an estate was time-barred. I adopted the recommendation of the master and held that it was. The Supreme Court held it was not.

Laborers Local No. 942 v. Lampkin

956 P.2d 422 (Alaska 1998)

Addressed whether a Project Labor Agreement violated Alaska Constitution and Borough Code. Affirmed in part, reversed in part. Upheld validity of Project Labor Agreement but reversed with regard to some of the conditions imposed.

Hammers v. City of Fairbanks

953 P.2d 500 (Alaska 1998)

Addressed issue of when time to pay workers' compensation benefits begins to run for penalty purposes.

Stam v. State

925 P.2d 668 (Alaska 1996)

Addressed issue of whether search warrant issued was supported by probable cause. Held was not.

Wasserman v. Bartholomew

923 P.2d 806 (Alaska 1996)

Evidentiary issues during the course of a personal injury and wrongful arrest trial. Remanded for further proceedings. Subsequent hearings held and currently again before the Supreme Court.

John v. Baker

982 P.2d 738 (Alaska 1999)

Supreme Court held by a 3-2 decision that tribal courts had concurrent jurisdiction with the superior court in resolving Indian child custody cases. Case of first impression.

Falconer v. Adams

20 P.3d 583 (Alaska 2001)

Held that an attorney's lien had priority over an award of attorney's fees.

Grant v. Stoyer

10 P.3d 594 (Alaska 2000)

Supreme Court overturned jury verdict for plaintiff that awarded plaintiff nothing for her pain in an accident where liability was admitted.

Nickoli v. State

2000 WL 1471558 (Alaska 2000)

Held plaintiff should have been able to testify in more detail about his prior relationship with victim regardless of rape shield law.

Northern Alaska Environmental Center v. State

2 P.3d 629 (Alaska 2000)

Held that by granting a right of way the state was effectively disposing of the property and that a "best interest" finding must be made. Legislature subsequently changed the law to provide otherwise.

State Dept. of Public Safety v. Fernandes

946 P.2d 1259 (Alaska 1997)

Supreme Court reversed court's decision that driver who had paid damages in full in an automobile accident did not substantially comply with state's self-insurance law.

State Dept. of Transportation v. FNSB

936 P.2d 1259 (Alaska 1997)

Right of way dispute between state and borough.

Brooks v. Wright

971 P.2d 1025 (Alaska 1999)

Addressed issue of whether legislature had exclusive right to manage game in Alaska under state constitution or whether it was subject to initiative process.

Mundt v. Northwest

963 P.2d 265 (Alaska 1998)

Addressed issue of whether party entering lawsuit late in the process had the right to challenge the existing judge. Held that they could.

Dawson v. State

977 P.2d 121 (Alaska 1999)

Defendant's sentence for sale of cocaine was excessive.

Roberts v. State

WL 41276 (Alaska 2000)

Trial evidence was insufficient to convict of assault on theory that shod foot constituted dangerous instrument.

Forshee v. State

1999 WL 1122481 (Alaska 1999)

Reversed under terms of case decided post trial that provided one cannot commit theft if obtaining the vehicle initially with owner's permission, i.e. taking a car for a test drive from a dealership.

State, CSED v. Bromley

987 P.2d 183 (Alaska 1999)

Alaska child support rate held to apply regardless of where children lived or whether they had ever lived in Alaska.

Dayton v. State

2000 WL 422355 (Alaska 2000)

Held that troopers lacked reasonable suspicion to look into box seized from defendant.

State v. Roberts

999 P.2d 151 (Alaska 2000)

Held that defendant could not return to the home of his victim and significant other even with her consent.

Brown v. Brown

Supreme Court No. S-9097/9098

Divorce case where Supreme Court disagreed with asset categorization and distribution.

Sovalik v. State of Alaska

Court of Appeals No. A-7634 (October 2001)

Reversed regarding limitations placed on cross-examination of state's witness.

Lincoln v. Interior Regional Housing

Supreme Court No. S-9274

Wrongful discharge claim where Supreme Court reversed a portion of the summary judgment order.

Virgil John v. State

Court of Appeals No. A-7252 (November 2001)

Appellate Court modified existing rule regarding site for felony trials and created presumption that trials be held in rural community where crime occurred.

ANSWER: (c) While many criminal matters I address routinely involve issues such as search and seizure, that have constitutional underpinnings, I cannot recall any cases that were substantial or unique in this field. Many of the cases listed in (a) above illustrate the type of cases I have handled.

Frank Turney v. State of Alaska did raise interesting freedom of speech issues. In addition to my opinion, attached, the matter was appealed to and affirmed by both the Alaska Court of Appeals and ultimately to the Alaska Supreme Court. Opinion No. 4799 - April 4, 1997, attached.

In Peltier V. State of Alaska, Court of Appeals No. 5830, attached, the Court of Appeals reviewed a number of my trial rulings that involved typical trial issues including the indictment process.

Folz v. State of Alaska, Court of Appeals No. A-5786, attached, addressed a typical search warrant issue where I had upheld the validity of the search warrant and the Appellate Court affirmed.

In Roehl v. State of Alaska, Court of Appeals No. 7402 (attached), the Court of Appeals upheld a 99 year sentence I imposed in a second degree murder case. This raised interesting sentencing issues under Alaska's sentencing laws.

I addressed a number of constitutional issues, including Miranda issues, in a series of pretrial motions in State of Alaska vs. Jesse Weaver, 4FA-S99-4000 Cr. I have attached my orders addressing these issues as a further reflection of the type of issues routinely addressed in criminal cases.

17. Public Office, Political Activities and Affiliations:

(a) List chronologically any public offices you have held, federal, state, or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which you were not confirmed by a state or federal legislative body.

ANSWER: None

(b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

ANSWER: Yes, In 1978 I was co-chairman of the Fairbanks office of Walter J. Hickel's campaign for Governor of Alaska. I helped organize campaign rallies and similar events, passed out campaign literature, put up signs, and participated in parades and similar functions.

18. Legal Career: Please answer each part separately.

(a) Describe chronologically your law practice and experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

ANSWER: After graduating from law school I went to work as a law clerk for the Superior Court in Fairbanks. I clerked for Judges Taylor, Van Hoomisen and Hepp. I began my clerkship in December of 1974 and concluded it in August of 1975. Prior to this time, the judges had not had law clerks so it was an

educational experience for all of us. I was used extensively for research and writing, as well as for case management. I also conducted hearings in probate and uncontested divorce matters.

- (2) whether you practiced alone, and if so, the addresses and dates;

ANSWER: After my clerkship I went to work for the law firm of Hughes, Thorsness, Gantz, Powell, and Brundin. I spent roughly 17 years with this law firm.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

ANSWER: I began work at Hughes, Thorsness in August of 1975. I was an associate for three years and then became a partner. I was a partner with the law firm until my departure on December 14, 1992. I worked at the Fairbanks office of Hughes, Thorsness throughout my career with the law firm.

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

ANSWER: In late August of 1975, I was hired by the law firm of Hughes, Thorsness, Gantz, Powell & Brundin. After three years, I became a partner with this law firm and remained with it for over 17 years. I eventually became managing partner for the Fairbanks office and served on the management committee of the law firm prior to my departure. I left the firm to become a Superior Court Judge in December 1992.

During my tenure with Hughes, Thorsness, I was involved in civil litigation, doing primarily defense work. I represented insurance companies, school boards, and local businesses as well as many individuals involved in personal injury matters.

During the last roughly five years with Hughes, Thorsness, I began handling a lot of administrative matters and represented employers in workers' compensation hearings. During this time frame I appeared before the Workers' Compensation Board on a monthly basis.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

ANSWER: I represented insurance companies, school boards, municipalities and local businesses. I also represented many individuals in personal injury related matters as well as professionals in malpractice cases.



- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

ANSWER: During the early part of my career I appeared in superior court frequently and tried roughly one major jury trial a year. During the last five years of my practice I specialized in workers' compensation matters as well as my other work and appeared before the Workers' Compensation Board on a monthly basis.

- (2) What percentage of these appearances was in:

(A) federal courts

ANSWER: 5%

(B) state courts of record;

ANSWER: 70%

(C) other courts

ANSWER: 25% Workers' Compensation Board.

- (3) Indicate the percentage of these appearances in:

(A) civil proceedings:

ANSWER: 97%

(B) criminal proceedings

ANSWER: 3%

In my last nine years as a Judge, 40% of my work load has been criminal, 30% domestic, and 30% civil.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

ANSWER: It has been nine years since I left private practice. I was in private practice for 17 years, therefore I am attempting to reconstruct events much of which occurred over twenty years ago. To the best of my recollection, however, I tried roughly ten jury trials and about the same number of non-jury trials before the State Superior Court. There were dozens of workers' compensation cases that I tried before the Workers' Compensation Board. In every case I was sole legal counsel at trial. I settled the vast majority of my cases.

- (5) Indicate the percentage of these trials that were decided by a jury.

ANSWER: 20%

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

ANSWER: None

- (e) Describe legal services that you have provided to disadvantaged persons or on a pro bono basis, and list specific examples of such service and the amount of time devoted to each.

ANSWER: I provided pro bono services throughout my career as a lawyer as did many attorneys in Alaska. We had a very persistent pro bono coordinator. Initially my pro bono work involved domestic or minor civil or administrative matters. However, as time passed I became fairly specialized in social security appeals. For the last ten years of my private practice I generally had at least one social security appeal. This would usually involve consultations with the client and his physician, an appellate brief, and a hearing before the social security appellate judge. I am happy to say that I was successful in all the appeals I took.

19. Litigation: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

ANSWER: Between 1975 and 1992 I handled hundreds of cases. The files remained with the law firm and were apparently destroyed five years after my departure. The court files have been placed on microfilm. Therefore, I am not readily able to provide names or citations for all of these cases. All of my jury trials, however, took place in the Superior Court in Fairbanks.

State v. Earl Russell was a double murder trial that took three weeks to try in 1979 and involved two charges of first degree murder against my client and a co-defendant. Our defense was that of defense of others. The conflict, which at a mining site on the Alaska Canadian border, was basically a wild west shootout and the issue was who started it. The judge was Jay Hodges, who still resides in Fairbanks. He currently is an assistant prosecutor in Fairbanks and can be reached at 907 451-5970. The co-defendant was represented by Harry Branson, who is now a Federal Magistrate in Anchorage, Alaska. The jury deliberated three days. My client was acquitted. The co-defendant was convicted of manslaughter.

Another case I tried in the late 1970s was Clark v. Woody, a personal injury case. Opposing counsel was Bixler Whiting (deceased), and the judge was Judge Van Hoomisen (retired) who still spends much of the year in Fairbanks. I represented a cab driver who was accused of negligently hitting a bicyclist. During the trial it became obvious that the plaintiff was inflating her damages and not being candid. I obtained a verdict less than my offer of judgment.

The third jury trial I tried was Bailey v. Lenard. The judge, again, was Judge Van Hoomisen and opposing counsel were John Rosie and Bixler Whiting. This was a wrongful death case where I represented the operator of an automobile that was struck by a motorcycle and the cyclist was killed. After a defense verdict, this matter was appealed to the Alaska Supreme Court and affirmed.

Several years later I tried another automobile/motorcycle case that involved a number of complex issues including sight distances issues and accident reconstruction. The case was Keen v. Weatter. The plaintiff's attorney was Pat Brown (retired). We beat our offer of judgment in this case.

I tried a rather complex property case in the late 1970s, Wheat v. Bentley, before then Superior Court Judge Alan Compton. Justice Compton later became a Supreme Court Justice and is now retired. He can be reached at 907 783 3189. Opposing counsel was Peter Aschenbrenner (907-456-3910). The case involved several parties and many property related issues. The case settled at the insistence of the Judge during trial.

I tried other jury trials and court trials over the years before Judges Van Hoomisen, Taylor, and Blair, all of whom are retired, but the names of the cases do not stand out. Opposing counsel include John Rosie (retired), Irvin Ravin (retired), Art Robson (retired), Richard Burke (deceased), Patrick Brown (retired), and Randy Ensminger. The case I defended against John Rosie involved a claim against the State of Alaska as a result of a serious automobile accident. He prevailed in this

case inasmuch as he obtained a jury verdict \$25,000 higher than I had offered before trial. This was the only jury trial that I felt I lost.

The cases I recall involving Irvin Raven, Patrick Brown, and Randy Ensminger also arose out of automobile accidents. The case involving attorneys Robson and Burke, Bovee v. Lasage, 664 P.2d 160 (Alaska 1983), arose from an alleged wrongful arrest where I represented the Fairbanks City Police. I recall a court trial early in my career where opposing counsel was Mary Nordale and the Judge was Jim Blair. I represented a liquor distributor trying to collect on a bill and she represented the holder of the liquor license. She prevailed. I can even vaguely recall several cases where the opposing party represented themselves at trial. One involved a claim against the City of Fairbanks by a gentleman whose basement was flooded with sewage. Although I was successful at trial on behalf of the City, I found the plaintiff to have presented a very strong case.

There are many attorneys still practicing in Fairbanks with whom I was involved in litigation and who represented clients in opposition to mine. They are familiar with my litigation skills and practice. They include Winston Burbank, phone 907 452-2211; 711 Gaffney Road, #202, Fairbanks, Alaska, 99701; David Call, 1020 Braneberry Lane, Fairbanks, Alaska 99709, 458-9464; John Burns, 100 Cushman Street, #311, Fairbanks, Alaska, 99701, 452-1666; Robert Groseclose 714 4th Ave., #200, Fairbanks, Alaska, 99701, 452-1855; Joe Paskvan 714 4th Ave., #301, Fairbanks, Alaska, 99701; Robert Downes 1008 16th Ave., #200, Fairbanks, Alaska 99701; Paul Barrett (retired) 479-5283; Charles Cole, 406 Cushman, Fairbanks, Alaska 99701.

During the last four to six years of my practice, I tried numerous workers' compensation cases before the Alaska Workers' Compensation Board. There were many different opposing counsel and I represented numerous employers. I would not be surprised to find that I handled several hundred such cases. I was very successful and developed a good rapport with the Workers' Compensation Board. The only Board member who still remains is a gentleman by the name of Fred Brown. He can likely comment on the quality of my workers' compensation practice and his work number is 907-451-2898.

20. Criminal History: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

ANSWER: No.

21. Party to Civil or Administrative Proceedings: State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian ad litem, stakeholder, or material witness.

ANSWER: No.

22. Potential Conflict of Interest: Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

ANSWER: I am committed to avoiding any conflict of interest as a judge or even the appearance of such a conflict. If I detected the possibility of a conflict I would strictly comply with the Judicial Canons, notify the parties, and withdraw from the case if appropriate. Because I have been a Judge for nine years, there are very few possible conflicts of interest that would concern me. I haven't represented a client in years and therefore no conflicts of that type would likely arise. I am a partner in a building in Fairbanks with several other attorneys that would require disclosure and the likely withdrawal from a case involving them.

23. Outside Commitments During Court Service: Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the Court? If so explain

ANSWER: No.

24. Sources of Income: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

ANSWER: See attached Financial Disclosure Report

25. Statement of Net Worth: Complete and attach the financial net worth statement in detail. Add schedules as called for.

ANSWER: See Attached Financial Net Worth Statement.

26. Selection Process: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

ANSWER: There is no selection commission in Alaska that recommends candidates for the Federal Judiciary. However, once a vacancy is announced attorneys are free to apply for the position. Thereafter a bar poll is conducted by the Alaska Bar Association and the candidates are rated by the Bar with regard to their qualifications. In my case there were 19 candidates. I placed 4th on the Bar poll. The Senators then reviewed the poll results and their independent investigation and nominated three persons for the position. The President then selected me from the three nominees.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

ANSWER: I was quite satisfied with the process and felt that it was handled well. After the Senators selected three "finalists" for the position we each traveled to Washington D.C. for an interview that was conducted at the White House. I was interviewed by three persons, one representing the White House, the other representing the Justice Department, and the third from the Attorney General's office. The interviews were very professionally conducted.

(c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue or question? If so, explain fully.

ANSWER: No.

FINANCIAL STATEMENTASSETS:

Cash on hand and in banks	\$ 7,500
U.S. Government securities	--
Listed securities	--
Unlisted securities	--
Accounts and notes receivable	--
Real estate owned (see attached)	363,000
Autos and other personal property	35,000
Cash value - life insurance	15,000
Other assets	
10% interest in investment partnership	80,000
Flower shop net worth (Daisy A Day)	85,000
Retirement accounts	180,000
State of Alaska PERS, SBS & Deferred	
MONY IRA	50,000
TOTAL ASSETS:	\$815,500

LIABILITIES:

Notes payable to banks - secured	\$142,000
(Bank of America home mortgage)	
Notes payable to banks - unsecured	--
Notes payable to relatives	--
Notes payable to others	--
Accounts and bills due	7,000
Unpaid income tax	--
Other unpaid income and interest	--
Real estate mortgages payable	--
Chattel mortgages and other liens payable	--
Other debts	-- **
TOTAL LIABILITIES:	\$147,000
NET WORTH:	\$668,000
TOTAL ASSETS AND LIABILITIES:	\$815,500

CONTINGENT LIABILITIES:

As endorser, comaker or guarantor	--
On leases or contracts	--
Legal claims	--
Provision for Federal Income Tax	--
Other special debt	--

GENERAL INFORMATION:

Are any assets pledged? No  
 Are you defendant in any suits or legal actions? No  
 Have you ever taken bankruptcy? No.

\*\* My college-aged children have student loans from the State of Alaska. My 21-year old daughter has a car loan from Wells Fargo Bank in Fairbanks with an outstanding balance of roughly \$10,000. Figures are estimates as of 11/1/01.

REAL ESTATE SCHEDULE

Home	\$240,000
Bjerrmark Property	24,000
Chatanika Lake Property	55,000
Harding Lake Property	26,000
Paradis Village Time share	18,000
TOTAL:	\$363,000



AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
Nomination ReportReport required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Beistline, Ralph R.	2. Court or Organization U.S. District Court, Alaska	3. Date of Report / /
4. Title (Article III judges indicate active or senior status, magistrate judges indicate full- or part-time) U.S. Dist. Court Judge Nominee	5. Report Type (check type) X Nomination, Date 11/09/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 11/01/2001
7. Chambers or Office Address 101 Lacey Street Fairbanks, AK 99701	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Executive Board Member, Volunteer Position Boy Scouts of America	
2	
3	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000-01	State of Alaska Judicial Retirement - eligible for reduced benefits at age 55.
2 2000-01	State of Alaska SBS (Supplemental Benefits System) - eligible upon retirement.
3 2000-01	State of Alaska Deferred Compensation - eligible upon retirement.

**III. NON-INVESTMENT INCOME** (Reporting individual and spouses; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2000-01	Spouse owns and operates Daisy A Day Floral at 4001 Geist Avenue, Fairbanks, Alaska	
2 2000	State of Alaska salary	\$107,256
3 2001	State of Alaska salary as of 10/26/01	\$88,253
4		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Beistline, Ralph R.	/ /

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	Exempt
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	Exempt	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE <sup>a</sup>
1	Denali State Bank	Wife's business vehicle	K
2			
3			
4			
5			
6			

<sup>a</sup> VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Beistline, Ralph R.				Date of Report / /			
<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Gain Code (J-P)	(4) Value Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 MONY Life Insurance IRA		None	K	W	Exempt				
2 Alaska State Supplemental Benefit System (SBS)		None	L	T	Exempt				
3 State of Alaska - Deferred Compensation		None	K	T					
4 HTGP&B Investments 81 - 9.7% interest in bldg partnership	G	Rent	PI	W	Exempt				
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
<b>1</b> Inc./Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Beistline, Ralph R.	/ /

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

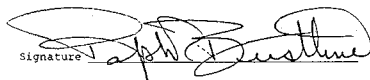
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Beistline, Ralph R.	/ /

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date November 9, 2001

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

Senator FEINGOLD. Thank you.

Next, we will hear from David Charles Bury, nominee to the U.S. District Court for the District of Arizona. Mr. Bury is a graduate of Oklahoma State University and the University of Arizona College of Law. Mr. Bury is currently an attorney in private practice in Tucson, Arizona.

I thank you for being with us today. Are there members of your family or other supporters here today whom you would like to introduce to the committee, and also, if you would like to make any opening remarks, you may proceed.

**STATEMENT OF DAVID CHARLES BURY, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA**

Mr. BURY. Yes. Thank you, Mr. Chairman. I would like to introduce my wife, Debbie, my daughter, Amanda. Mandy is a school teacher in Tucson and left her fourth graders for a couple of days to come here. I have two sons who are not able to be here, Christopher and Jordan.

I have no opening statement to make other than to thank the chairman for convening this meeting and giving me the honor of being here. Thank you, sir.

[The biographical information of Mr. Bury follows:]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
David Charles Bury
2. Address: List current place of residence and office address(es).  
  
Residence: Tucson, Arizona  
  
Office: 2606 East 10<sup>th</sup> St., Tucson, Arizona 85716
3. Date and place of birth.  
December 9, 1942 Tulsa, Oklahoma
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to Deborah Apperson Bury, maiden name Deborah Mae Apperson. Part-time teacher for Tucson Unified Schools, 1010 East 10<sup>th</sup> St., Tucson, Arizona 85719.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Oklahoma State University, 1960-1964, BS 1964  
Tulsa University, summer session, 1962  
University of Arizona College of Law, 1964-1967, JD 1967
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  
  
1964-1965 Sales and delivery, Fuller Brush Company  
1966 Law clerk, Robertson, Childers, Burke & Drachman  
1967-1971 Lawyer associate, Robertson & Fickett, P.C.  
1971-1973 Partner, Everett & Bury, P.C.  
1973-1983 Partner, Everett, Bury & Moeller, P.C.  
1983-1987 Partner, Bury & Moeller, P.C.  
1987-1988 Partner, Bury, Moeller & Humphrey, P.C.  
1988-2000 Partner, Bury, Moeller, Humphrey & O'Meara

2001-present Partner, Bury, Moeller, O'Meara & Gage, P.C.

Board member, Desert Christian High School, 1993-1996

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Advocate, American Board of Trial Advocates  
Fellow, American College of Trial Lawyers, inducted 1986  
Listed in "Best Lawyers in America" for the last seven years  
as voted upon by peers

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association  
State Bar of Arizona  
Pima County Bar Association  
Lawyer Representative, Ninth Circuit Judicial Conference  
Commission on Trial Court Appointments for Pima County  
Disciplinary Committee, State Bar of Arizona

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

No organizations that lobby  
Casas Adobes Baptist Church  
Young Life

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Arizona state courts, 1967  
United States District Court, District of Arizona, 1968

United States Supreme Court, 1999

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None

13. Health: What is the present state of your health? List the date of your last physical examination.

Good health

Date of last physical examination June 25, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None



17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  
  
Never served as a clerk to a judge
  2. whether you practiced alone, and if so, the addresses and dates;  
  
Never practiced alone
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;  
  
 Lawyer associate, 1967-1971, Robertson & Fickett 32 N Stone Suite 1900, Tucson, Arizona 85701  
 Partner, 1971-1973, Everett & Bury, P.C. 32 N. Stone, Suite 1100, Tucson, Arizona 85701  
 Partner, 1973-1983, Everett, Bury & Moeller, P.C., 2606 E. 10<sup>th</sup> St., Tucson, Arizona 85716  
 Partner, 1984-1987, Bury & Moeller, P.C. 2606 E. 10<sup>th</sup> St., Tucson, AZ 85716  
 Partner, 1987-1988, Bury, Moeller & Humphrey, P.C., 2606 E. 10<sup>th</sup> St. Tucson, Arizona 85716  
 Partner, 1988-2000, Bury, Moeller, Humphrey & O'Meara, P.C., 2606 E. 10<sup>th</sup> St., Tucson, Arizona 85716  
 Partner, 2001, Bury, Moeller, O'Meara & Gage, P.C., 2606 E. 10<sup>th</sup> St. Tucson, Arizona 85716
- b. 1. What has been the general character of your law practice, dividing it into periods with

dates if its character has changed over the years?

1967-1969, general practice in large law firm, including domestic relations, research and writing, real estate and business law.

1970-present, trial lawyer in civil litigation and some commercial litigation. Primarily, retained by insurance carriers to defend civil cases of all types.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Wal-Mart, Raytheon Missile Systems, Pima County, Kemper Insurance, Aetna Insurance, Safeco, Home Insurance, Farmers Insurance, Travelers Insurance, USF&G and others. Defended medical and legal malpractice cases, products liability and construction site cases. Defended governmental entities in false arrest, assault and battery and road design and construction cases. Defended teachers and the school district in school related claims. Retained by a carrier to handle cases in the spectator sports area such as Colorado Rockies and the hockey arena and race car track. Some representation of both employers and employees in employment cases such as wrongful termination.

Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently over the past 30 years.

2. What percentage of these appearances was in:
  - (a) federal courts;

5%

(b) state courts of record;

95%

(c) other courts.

3. What percentage of your litigation was:  
(a) civil;

100%

(b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

250 as sole counsel

5. What percentage of these trials was:  
(a) jury;

80-90% or over 200 jury trials

(b) non-jury.

10-20%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) Coronado v. Wal-Mart Stores, Inc.

Case number: US District Court, District of Arizona  
#93-CV-661  
12/14/93 to 12/7/95

Judge: Alfredo Marquez

Attorneys: Plaintiff  
Richard J. Gonzales  
3501 N. Campbell Ave., #102, Tucson,  
Arizona 85719  
520-327-1121

Co-defendant Double Check Security  
Samuel D. Alfred  
3430 E. Sunrise Dr., #200, Tucson,  
Arizona 85718 520-792-1181

Defendant Wal-Mart Stores, Inc.  
David C. Bury

Summary: The case was filed by a 10 year old female Mexican National against Wal-Wart and a company providing security services to Wal-Mart. The girl entered the country at the border with her two brothers and went to the Wal-Mart in Nogales, Arizona. A security guard enticed the girl outside and to the back of the store property and raped her. Her attorneys alleged negligence in the hiring and supervision of the security guard. They also alleged that Wal-Mart had notice of the risk of harm when the guard left the store with the girl. The plaintiff made an offer of proof of Hedonic damages with an expert and the court rejected the testimony. Both sides called experts in security. The claims for damages submitted to the jury were for physical and emotional injuries. The jury found for both defendants.

2) Valley National Bank as Conservator of the Estate of Martha Pray v. NASCAR

Case number: Pima County Superior Court #220940  
Appeal: 2 CA-CV 5918  
12/17/84 to 8/28/86

Judge: Michael J. Brown

Attorneys: Plaintiff  
Silas H. Schultz and Michael F. Rollins  
4280 N. Campbell Ave., #214, Tucson,  
Arizona 85718

520-577-7777

Defendants NASCAR and Tucson Raceway  
David C. Bury

Summary: The plaintiff went to the local automobile race track with her husband. They were allowed to enter the pit area after signing a release of liability. The plaintiff was sitting in a lawn chair near the track when a race car left the track during a race and struck her. She sustained brain injuries rendering her legally incompetent. A conservator was appointed on her behalf to bring the claim for damages. The plaintiff alleged the release was void as against public policy. She alleged the track operator was negligent in failing to provide for spectator safety. She alleged NASCAR was negligent for starting a race with spectators in a zone of danger. After a two week trial, the jury found for all defendants. The judgment was affirmed on appeal. The case is cited in Arizona as authority that a pre-accident release is valid if the language of the agreement is clear and unambiguous.

3) Lopez v. Chesebrough Ponds, Inc.

Case number: Pima County Superior Court #161860  
10/26/76 to 8/17/78  
Judge: Jack T. Arnold

Attorneys: Plaintiff  
Dale Haralson  
1 S. Church Ave., #900, Tucson, Arizona  
85701  
520-792-3836

Defendant Chesebrough Ponds  
David C. Bury

Summary: Claim for second and third degree burns over a substantial portion of the body of a five year old boy. His mother had been shopping and left her grocery bags on kitchen counter and a bottle of Cutex nail polish remover was in one bag. Boy used the drawers to climb onto the counter, found the colorful bottle, poured contents into the toaster and ignited the liquid. He ran to his parents fully engulfed in flames. Plaintiff contended that the liquid was dangerously flammable and did not have a warning. Further, that the product was defective because it did not have a child-proof cap. Two week jury trial with courtroom

demonstrations of flammable household products and expert testimony from an engineer and a psychologist regarding product warnings. Plaintiff asked the jury for more than \$2,000,000 and the jury found for the defense.

4) Nirschel v. Dumond Chemicals, Inc.

Case number: Pima County Superior Court #300513  
6/27/94 to 4/28/98  
Judge: Charles S. Sabalos

Attorneys: Plaintiff  
Thomas J. Davis and Anthony Terry  
4750 N. Oracle Rd., #210, Tucson, Arizona  
85705  
520-624-1774

Co-counsel for Dumond Chemical  
David C. Bury and  
Larry C. Crown  
2800 N. Central Ave., #1800, Phoenix  
Arizona 85004 602-234-7800

Summary: This was a products liability case against the manufacturer of a lead paint remover. It was alleged that the product was dangerously toxic and defective because the warnings and instructions for use were inadequate. The plaintiff was preparing to use the product with a high pressure paint sprayer when he was exposed to a mist which he inhaled. He suffered immediate burning in his lungs. He developed chronic obstructive lung disease and was totally disabled from work. He further claimed that he may need a lung replacement procedure. The issue at trial was causation. The defense claimed that the product did not cause the injury. The plaintiff was a smoker and had evidence of lung damage prior to the accident. Both sides offered testimony from lung specialists and toxicologists. Discovery and trial duties shared with co-counsel Larry Crown. After a two week jury trial, there was a verdict in favor of the defendant manufacturer.

5) Alan Boqutz, as Personal Representative for the Estate of Matthew Bole

Case number: Pima County Superior Court #234747  
7/7/86 to 9/2/92  
Judge: Lina Rodriguez

Attorneys: Plaintiff  
 Silas Shultz and Michael Rollins  
 4280 N. Campbell Ave., #214, Tucson,  
 Arizona 85718  
 520-577-7777

Defendant Kinder Care  
 Michael Gothreau, deceased  
 335 N. Wilmot Rd., #500, Tucson, Arizona  
 85711  
 520-748-2440

Defendant Tucson Unified School District  
 David C. Bury

Summary: Seventeen year old driver, not a party at the time of trial, struck and killed a six year old boy crossing the street on a major thoroughfare. The boy left school after hours when he was supposed to be picked up by daycare provider Kinder Care. The driver failed to arrive and the claim against the school was a lack of supervision and control of the child. Jury found for the defendant school district and 100% damages against Kinder Care. Awarded damages in the amount of \$1,400,000.

6) McCabe v. Tucson Psychiatric Institute

Case number: Pima County Superior Court #302875  
 1/31/95 to 2/12/97  
 Judge: Michael Alfred

Attorneys: Plaintiff  
 Alexander L. Sierra  
 1 S. Church Ave., #1600, Tucson, Arizona  
 85702  
 520-628-8700

Defendant Tucson Psychiatric Institute  
 David C. Bury

Summary: Plaintiff's deceased husband sought psychiatric care with the defendant clinic for major depression. He had a prior hospitalization for depression and suicide ideation, was treated and released. He made a prior suicide attempt. He was interviewed by the defendant intake worker who was not given a history of the prior attempt even though the wife was present. The patient was given a referral for outpatient therapy and before that appointment

and two days after the intake he hung himself from a beam in the living room of the family residence. He was found by his wife and teenage daughter. Plaintiff's standard of care expert testified that the patient presented with symptoms giving notice to the clinic that he was a clear suicide threat and should have been retained until the prior medical records could be reviewed and that he should have been admitted as an inpatient. Tried the case to a jury with a psychiatrist expert who reviewed all medical records and testified that the patient did not present as a suicide threat. Verdict for the defendant.

7) Chapman v. Levi-Strauss

Case number: Pima County Superior Court #197007

10/26/81 to 4/24/84

Judge: Jack T. Arnold

Attorneys: Plaintiff

William T. Healy and James Dyer  
5210 E. Williams Cir., #720, Tucson,  
Arizona 85711  
520-790-1400

Defendant Levi-Strauss  
David C. Bury

Summary: The plaintiff was an electrician working on an electrical junction box when a spark ignited his Levi jeans. He was engulfed in flames and sustained second and third degree burns. He claimed that the jean material was dangerously flammable. Both parties offered expert testimony from textile engineers. There were courtroom demonstrations with flammable materials. One theory was that jeans are more flammable after continued wear because of the change in material characteristics of the cotton content in the material. The plaintiff contended the fabric violated the Flammable Fabrics Act. The jury found the product was not defective.

8) Maders v. Diversified Design

Case number: Pima County Superior Court #260762  
9/18/89 to 5/12/94

Judge: Robert Buchanan

Attorneys: Plaintiff



Bernard I. Rabinovitz  
721 N. 4<sup>th</sup> Ave., Tucson, Arizona 85717  
520-624-5526

Defendant Diversified Design  
David C. Bury

Summary: The plaintiff was an employee of a roofing contractor applying roofing materials on a commercial job and was backing up in the process and fell through an opening in the roof structure that was framed to contain a roof access ladder in the finished structure. He fell twenty feet sustaining head injuries and permanent brain damage resulting in total disability. The claim was against the general contractor for failure to provide a safe place to work for the employees of subcontractors. Expert testified that the failure to cover the opening or protect it by a rail was in violation of OSHA. Defendant offered testimony that it had been covered and was removed. Experts in neuropsychiatry were used and cross examined by both sides regarding the extent of plaintiff's cognitive impairment. A special action was taken by plaintiff shortly before trial regarding discovery and evidentiary rulings by the court. After eight day trial, jury found in favor of the defendant.

9) Cornett v. Pace Construction Company and ARK Wall Systems

Case number: Pima County Superior Court #248835  
2/5/88 to 12/18/89

Judge: James C. Carruth

Attorneys: Plaintiff  
J. Patrick Butler  
3320 N. Campbell Ave., #150, Tucson,  
Arizona 85719  
520-325-0700

Defendant ARK Wall Systems  
Jack Redhair  
33 N. Stone Ave., #1700, Tucson, Arizona  
85701  
520-623-4353

Defendant Pace Construction Company  
David C. Bury

Summary: Plaintiff was a drywall installer on a job site

and in the process of taping the drywall he fell through an unprotected elevator shaft sustaining paralyzing injuries. Plaintiff offered expert testimony from an engineer/construction expert supporting a theory that the opening was in violation of OSHA. During the testimony at trial, counsel for co-defendant asked a question of a witness that resulted in the judge declaring a mistrial. The matter was later settled for \$1,250,000.

10) McKay v. Industrial Commission

Case citation: Court of Appeals of Arizona, 6 Ariz.  
App. 381(1967)  
Supreme Court of Arizona, 103 Ariz. 191  
(1968)

Attorneys: Industrial Commission of Arizona  
Spencer K. Johnston  
2675 E. Broadway Blvd., Tucson, Arizona  
85716  
520-628-5188

Petitioner Betty Hult McKay  
David C. Bury

Summary: The Industrial Commission denied my client benefits finding that her accident did not occur in the course and scope of her employment. A Writ of Certiorari was taken to the Court of Appeals of Arizona. That court was persuaded to set aside the award of the Industrial Commission. The court concluded that she was within the course and scope based upon her testimony that, although she was on her way home, she ran a business errand on the way and had more business to conduct at home. The Court of Appeals had only been established since 1965. In making its ruling, the court had to review an opinion of the Supreme Court of Arizona and found contrary to that opinion and established a more "liberal view". The Industrial Commission then filed a Petition for Review by the Supreme Court of Arizona. That court vacated the opinion of the Court of Appeals and reinstated the award of the court below. The court said: "Whether prior decisions of the highest court in a state are to be disaffirmed is a question for the court which makes the decisions." The case is oft-cited for the dual-purpose rule for an issue regarding course and scope of employment. It is also significant for the instruction of the

court regarding the authority of rulings of the Court of Appeals of Arizona.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Pooley v. National Hole in One Association, US District Court, District of Arizona, there was a claim made on behalf of client Pooley for violation of his right to publicity. The defendant organization used the professional golfers likeness from TV coverage of his hole-in-one in its advertising without his permission. There was no authority in Arizona in support of such a claim but the judge ruled by motion for Partial Summary Judgment allowing the claim. The matter was favorably settled.

A teenage girl sustained fatal injuries during a take-down restraint at a local juvenile residential treatment center. Criminal charges were filed against the technicians alleging death by restraint asphyxia. There was considerable adverse publicity about the institution. I was retained to handle the civil case and resolve the matter without litigation. It was settled and the release contains a confidentiality clause as to the amount. The matter was referred to as Campos v. Desert Hills.

I was retained by a large law firm to defend against allegations of wrongful discharge, slander and a complex fee dispute regarding cases being handled by the former associates. A focus group was used to discover juror attitudes and found there was more concern with the slander allegations than the wrongful discharge. What seemed to be a case without a resolution was settled two days before trial. The case was Hofmann and Kuhnlein v. Goldberg and Osborne. The client and any contact about this case would be John Osborne, 33 N. Stone Ave., #1850, Tucson, Arizona 85701. 520-620-3975. The settlement was confidential.

In *Pierce v. Casas Adobes Baptist Church*, the church had inadequate liability limits in an accident in which a church van rolled and rendered a youth a paraplegic. The limits were in the amount of one-million dollars and the request exceeded two-million dollars in a case where there was no defense on liability. Plaintiff waived a jury and we tried the case to the court with a finding of \$900,000 in damages.

Have on occasion served as arbitrator in alternative dispute resolutions.

Moot court judge for the Jenckes competition for the American College of Trial Lawyers

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Employment Agreement provides for the payment of employee share of work in progress. It is to be paid out over a period of 5 years in equal annual installments.

Stockholders Agreement provides that the corporation purchase shares of stock owned by shareholder at the time of termination. The amount is payable within 180 days of termination.

Ownership interest in two office buildings that are leased to the law firm of Bury, Moeller, O'Meara & Gage. The successor firm would continue the lease and I would receive rental income.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

It is permissible for a judge to receive payment for his interest in his former law firm for services rendered before becoming a judge. It is anticipated that an exact amount and payment period can be determined at the time of termination. There would be no sharing in the profits of the former firm. There would be a recusal in any case in which the former firm or any lawyer thereof is involved until full payment has been made. The same would apply to the payment of rental income.

A retirement plan will remain in the former firm for up to one year according to the terms of the plan but then removed. Recusal would be appropriate in any case in which the former firm is involved.

A client list will be prepared at termination from employment at the law firm for conflict checks by staff regarding prior representation in a matter coming before the court.

I would follow the canons of The Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached financial disclosure report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached FINANCIAL STATEMENT NET WORTH form.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

AO-10 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

<b>1. Person Reporting</b> (Last name, first, middle initial)	<b>2. Court or Organization</b>	<b>3. Date of Report</b>
Bury, David C.	U.S. District Court - Arizona	09/12/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	<b>5. Report Type (check type)</b>	<b>6. Reporting Period</b>
U.S. District Judge nominee	X Nomination, Date 09/10/2001	01/01/2000
	Initial Annual Final	to 08/31/2001
<b>7. Chambers or Office Address</b>	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>	
2606 E. 10th Street		
Tucson, Arizona 85716		
	<b>Reviewing Officer</b>	<b>Date</b>

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

## **I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

	<b>POSITION</b>	<b>NAME OF ORGANIZATION / ENTITY</b>
<b>NONE</b> (No reportable positions.)		
1	President	Bury, Moeller, O'Meara & Gage
2	President	Bury, Moeller, Humphrey & O'Meara
3		

## **II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

	<b>DATE</b>	<b>PARTIES AND TERMS</b>
<b>NONE</b> (No reportable agreements.)		
1	2000	Bury, Moeller, Humphrey & O'Meara Pension Plan with former law firm, control
2	2000	Bury, Moeller, Humphrey & O'Meara Employment Agreement for payment of interest in former law firm.
3	2000	Bury, Moeller, Humphrey & O'Meara Stockholder's Agreement for payment of value of stock in former law firm.

## **III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

	<b>DATE</b>	<b>SOURCE AND TYPE</b>	<b>GROSS INCOME</b> (yours, not spouse's)
<b>NONE</b> (No reportable non-investment income.)			
1	1999	Bury, Moeller, Humphrey & O'Meara	\$198,000
2	1999	Tucson Unified School District	
3	2000	Bury, Moeller, Humphrey & O'Meara	\$146,000
4	2000	Tucson Unified School District	

Name of Person Reporting		Date of Report
Bury, David C.		09/12/2001

**FINANCIAL DISCLOSURE REPORT**

**SECTION HEADING.** (Indicate part of report)  
Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Bury, Moeller, O'Meara & Gage	\$27,500
6	2001	Tucson Unified School District	

FINANCIAL DISCLOSURE REPORT      Name of Person Reporting      Date of Report  
 Buzy, David C.      09/12/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	Washington Mutual	Mortgage on Rental Property #1	K
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more



Name of Person Reporting  
**Bary, David C.**

Date of Report  
**09/12/2001**

**FINANCIAL DISCLOSURE REPORT**

(Includes those of spouse and dependent children. See pp. 16-54 of Instructions.)

**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g. dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date- Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Rental Property #1 Arizona	Tucson	E Rent	N	W	Exempt				
2 Rental Property #2 Arizona	Tucson	C Rent	L	W	Exempt				
3 Law Firm Work in Progress		None	M	T	Exempt				
4 Law Firm Stock		None	K	Q	Exempt				
5 Wells Fargo Accounts	B	Interest	R	T	Exempt				
6 Wells Fargo IRA	A	Dividend	J	T	Exempt				
7 - Growth Fund Amer American Int'l Group - common	A	Dividend	J	T	Exempt				
8 Caterpillar - common	A	Dividend	J	T	Exempt				
9 Freddie Mac - common	A	Dividend	J	T	Exempt				
10 General Electric - common	A	Dividend	J	T	Exempt				
11 Hartford Fincl. Svs. - common	A	Dividend	J	T	Exempt				
12 Nokia - common	A	Dividend	J	T	Exempt				
13 Wells Fargo - common	A	Dividend	J	T	Exempt				
14 Money Market	A	Interest	K	T	Exempt				
15 College Custodian Fund #1									
16 - Money Market	A	Interest	J	T	Exempt				
17 College Custodian Fund #2									
1 Net Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$5,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000		
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more		
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market				

		Name of Person Reporting Bury, David G.		Date of Report 09/12/2001	
<b>FINANCIAL DISCLOSURE REPORT</b>					
(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)					
<b>VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions</b>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
Place "EX" after each asset exempt from prior disclosure.					If not exempt from disclosure (2) Date: (3) Value Gain (4) Code (5) Identity of buyer/seller (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
18 - Amer. Nat'l. Bank - CD	A	Interest	J	T	Exempt
19 - America Bank CD	A	Interest	J	T	Exempt
20 - Discover Bank CD	A	Interest	J	T	Exempt
21 - 1st Nat'l. Bank CD	A	Interest	J	T	Exempt
22 - 1st USA Bank	A	Interest	J	T	Exempt
23 - Park Ave. Bank CD	A	Interest	J	T	Exempt
24 - Money Market	A	Interest	J	T	Exempt
25 AG Edwards IRA					
26 - Dell Computers - common	A	Dividend	J	T	Exempt
27 - Investment Co. of America mutual fund	A	Dividend	J	T	Exempt
28 - Intell Corp.	A	Dividend	J	T	Exempt
29 - Johnson & Johnson - common	A	Dividend	J	T	Exempt
30 - AIM Int'l. Funds	A	Dividend	J	T	Exempt
31 - Sprint - common	A	Dividend	J	T	Exempt
32 Trust Beneficiary Trust Co. of Oklahoma			M	T	Exempt
33 - Bank of Amer. account					Exempt
34 - Tulsa Teachers Credit Union					Exempt
1 Income Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more)					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more)					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (U=Book Value V=Other W=Estimated)					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Bury, David C.		Date of Report 09/12/2001	
VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount	(2) Type (e.g., dividend, rent or interest)	(1) Value	(2) Value	(1) Type
Place "X" after each asset exempt from prior disclosure.	Code (A-H)		Code (J-P)	Method (Q-W)	
					If not exempt from disclosure (2) Date (3) Value (4) Code (5) Identity of Month- Day (J-P) (A-H) (if private buyer/seller transaction)
NONE (No reportable income, assets, or transactions.)					
35 - Alliance US Bond					Exempt
36 - Raytheon New					Exempt
37 Profit Sharing Plan - See attached list	A	Interest	O	T	Exempt
38					
39					
40					
41					
42					
43					
44					
45					
46					
47					
48					
49					
50					
51					

1. Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4)	F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$15,001-\$50,000	E=\$15,001-\$50,000
2. Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 L=\$50,001-\$100,000	M=\$100,001-\$250,000 N=\$250,001-\$500,000	O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000	Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000	S=\$50,000,001 or more T=\$50,000,001 or more
3. Val Mth Codes: Q=Appraisal (Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

## PROFIT SHARING PLAN HOLDINGS

SB Money Funds Cash Port CL A	Loan - Gage
Caterpillar, Inc.	Scotia Gardens LP
Costco Wholesale Corp New	Scotia Northern Lakes
E I DuPont De Nemours & Co	Scotia Northwest Gardens
Ebay, Inc.	Scotia Santa Rita Hills
Exxon Mobil Corp	Ranco Agua Dulce LLC
Home Depot, Inc.	Ford Motor Co.
Int'l. Business Machines Corp.	Arizona Public Service Senior
Kimberly Clark Corp.	Bankamerica Corp.
McDonalds Corp.	Target Corp.
Microsoft Corp.	Federal Farm Credit Banks
Sprint Corp.	Providian Nat'l Bank
Sun Microsystems, Inc.	AT&T Corp.
Polaroid Corp Medium Term Note	AT&T Wireless Services
Toledo Edison Co. DEBS	Advanced Micro Devices, Inc.
Advanced Micro Devices, Inc.	
Apple Computer, Inc. Notes	
CIT Group Holdings, Inc.	
First Union Bank Sub Notes	
Duane Reade, Inc. SR Sub Notes	
Wells Fargo Capital Trust IV	
Dreyfus Funds	
Tucson Elec Power 1 <sup>st</sup> Mtg-Reg	
Strips-Tint-US Treasury	
Federal Home Loan Bank CONS	
GNMA	
Duane Reade, Inc. SR SUB Notes	
General Motors Corp.	
Hancock John Bank & Thrift	
Microsoft Corp.	
Fannie Mae Series 2001-49	
Ebay, Inc.	
Kimberly Clark Corp.	
McDonalds Corp.	
Wells Fargo Accounts	
Merrill Lynch-Basic Value	
Putnam Health Sciences Trust	
Investments - Deeds of Trust	
Loan - Rochin	
Loan - Jones	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting
	Bezy, David C.

Date of Report  
09/12/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Bury, David C.
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Date of Report  
09/12/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Date \_\_\_\_\_

9/12/01

Note: Any individual who knowingly and willfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks			Notes payable to banks-secured		
AC Edwards and Wells Fargo		38 000	Notes payable to banks-unsecured		
U.S. Government securities-add schedule	None		Notes payable to relatives	None	
Listed securities-add schedule Att.		45 500	Notes payable to others	None	
Unlisted securities--add schedule	None		Accounts and bills due		10 000
Accounts and notes receivable:	None		Unpaid income tax	None	
Due from relatives and friends			Other unpaid income and interest	None	
Due from others			Real estate mortgages payable-add schedule Attached		169 000
Doubtful			Chattel mortgages and other liens payable	None	
Real estate owned-add schedule Attached		730 000	Other debts-itemize:		
Real estate mortgages receivable	None				
Autos and other personal property		50 000			
Cash value-life insurance	None				
Other assets itemize:					
Profit Sharing Plan		750 000			
IRA		41 000			
Interest in law firm		150 000	Total liabilities		179 000
College trust fund		70 000	Net Worth		1,695 500
Total Assets		1,874 500	Total liabilities and net worth		1,874 500
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	None	
Only related to mortgages payable schedule			Are you defendant in any suits or legal actions? No		
On leases or contracts	None		Have you ever taken bankruptcy? No		
Legal Claims	None				
Provision for Federal Income Tax	None				
Other special debt	None				

David Charles Bury

## LISTED SECURITIES

\$ 6,000	American Int'l. Group, Inc.
\$10,000	Caterpillar, Inc.
\$ 8,000	Freddie Mac
\$ 8,000	Hartford Fin'l. Svcs. Group, Inc.
\$ 5,000	General Electric Co.
\$ 2,500	Nokia Corp.
<u>\$ 6,000</u>	Wells Fargo & Co. New
\$45,500	

## REAL ESTATE SCHEDULE

\$360,000	Personal residence
\$ 70,000	Office building #1 (one-third)
<u>\$300,000</u>	Office building #2 (one-half)
\$730,000	

## REAL ESTATE MORTGAGES PAYABLE SCHEDULE

\$138,000	Mortgage on primary residence - Tucson, Arizona
\$ 8,000	Mortgage on office building #1 (one-third)
<u>\$ 23,000</u>	Mortgage on office building #2 (one-half)
\$169,000	

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

1983-1990 served pro bono to Casas Adobes Baptist church and referred members with general legal advice and one litigated matter involving a restraining order. Contact was the business office, Ms. Carol Hubbard, 2131 West Ina Road, Tucson, Arizona and Pastor Roger Barrier.

1990 to present serving as pro bono counsel to Desert Christian High School and its board. General school related legal matters as well as for parents and students. Contact was Administrator Alan Neilson, 7525 E. Speedway Blvd., Tucson, Arizona.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There was no selection commission.

In March, 2001, I was advised by two lawyers that there was an opening for a judicial appointment in the US District Court for Arizona and would I consider submitting my name for nomination. After consultation



with my family and law partners, I sent letters to Senators Jon Kyl and John McCain asking that I be considered. I do not know the senators so I asked some lawyers and others to contact them on my behalf and write letters as they would deem appropriate to discuss my career and reputation in the profession. I was called by someone in Senator Kyl's office and invited to an interview with the senator. I met him on April 17, 2001, and we discussed my career and the selection process. One staff person was present for the interview. I was then contacted by White House assistant counsel and invited for an interview at his office. I went to Washington on May 28, 2001, and met with Counsel to the President, Alberto R. Gonzales and two staff members. We discussed my background, education, career and family and what I would bring to the bench. I was then contacted by staff and told I was under consideration and would receive documents to complete and return to continue the selection process. I was interviewed by the FBI and a background check was done. I was interviewed over the telephone by a representative of the Department of Justice. I received notice of formal nomination on September 10, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I respect the separation of powers between our branches of government. I would acknowledge that a judge is not a representative of the people and is not elected by the people to enact legislation. A trial judge should apply the law as written and interpret the law when it or its application is confusing or conflicting based upon the matter in controversy. The role is to resolve a dispute which is "ripe" or justiciable and not problem solve beyond the written law. Jurisdiction is limited by statute and there must be standing to sue in an actual matter in dispute.

Senator FEINGOLD. Thank you, Mr. Bury.

Our final nominee today is Robert Randall Crane, named to the U.S. District Court for the Southern District of Texas. Mr. Crane graduated from the University of Texas at Austin and the University of Texas School of Law. He is currently an attorney in private practice with the Texas law firm of Atlas and Hall, LLP.

Mr. Crane, I welcome you here today. I note that you have a very patient family, well behaved young man there, and I invite you to introduce any members of your family or others who may be here to support you and then make any opening remarks you would like.

**STATEMENT OF ROBERT RANDALL CRANE, NOMINEE TO BE  
DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS**

Mr. CRANE. Thank you. First, I would like to introduce my son, who I think has set a new eight-year-old record for sitting still so long——

[Laughter.]

Mr. CRANE. And that would be Cameron, and my wife, Joanna. Senator FEINGOLD. How do you do?

Mr. CRANE. My parents, Bob and Baudelia Crane, are also here. My brother, Scott, acting as photographer. My sister-in-law, Sasha, who is also here, and their 18-month-old child Taylor. I think that is her out in the hall that we hear.

My sister, Debbie Crane, and her husband, Ernest Aliseda, and their four children, Cristina, Nicolas, Allie, and Sophie, who's asleep on her shoulder, and my other sister, Audrie Crane, is here, as well. I think that is everyone.

[The biographical information of Mr. Crane follows:]

## UNITED STATES SENATE QUESTIONNAIRE FOR JUDICIAL NOMINEES

### I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).  
**Robert Randall Crane (a/k/a Randy Crane)**
2. Address: List current place of residence and office address(es).  
**Residence: McAllen, Texas**  
**Office: Atlas & Hall, L.L.P.**  
**818 Pecan**  
**McAllen, Texas 78501**
3. Date and place of birth:  
**May 27, 1965, Houston, Texas**
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**Married to Joanna Wright who is employed by Crane Family Partnership, which she owns in part, that operates *Party Universe #353*, a franchised retail party goods store.**
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
**University of Texas School of Law; Summer 1985 to Fall 1987; Doctor of Jurisprudence - December 22, 1987**  
**University of Texas - Austin; Fall 1982 to Spring 1985; Bachelor of Arts in Economics - May 18, 1985**  
**University of Texas - Pan American (formerly Pan American University); Spring 1982 and Summer 1983; no degree awarded**
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner,

proprietor, or employee since graduation from college.

#### EMPLOYMENT

June 1986 to September 1986: ATLAS & HALL, L.L.P., 818 Pecan, McAllen, Texas 78501. Summer Law Clerk.

May 1987 to August 1987: WICKWIRE, GAVIN & GIBBS, 8100 Boone Blvd., Suite 700, Vienna VA 22182. Summer Law Clerk

August 1987 to September 1987: ATLAS & HALL, L.L.P., 818 Pecan, McAllen, Texas 78501. Summer Law Clerk.

March 1988 to Present: ATLAS & HALL, L.L.P., 818 Pecan, McAllen, Texas 78501; Associate attorney, March 1988 to December 1993. Partner, January 1994 to present.

#### NON-PROFIT ORGANIZATIONS

May 1990 to Present: American Cancer Society - Volunteer 1990 to present; Chairman, Relay for Life 2000; Board of Directors 2001; Committee Chair, Relay for Life 2001, Volunteer - Grass Roots Campaign 2001

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Graduated from U.T. School of Law with Honors  
Attended University of Texas on Texas Achievement Award Scholarship

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Hidalgo County Bar Association, Director 1994-1995  
Hidalgo County Young Lawyer's Association, President 1990  
Texas-Mexico Bar Association, Director 1998 to present  
International Law Section of State Bar of Texas, Dir. 1999-2001

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**Active in Lobbying:**

**American Cancer Society** - Chairman, Relay for Life 2000, Board of Directors 2001, Committee Chair, Relay for Life 2001, Volunteer - Grass Roots Campaign

**Other Organizations:**

**Hidalgo-Starr Counties Texas Exes** - President (former), Treasurer, Scholarship Selection Committee

**Boy Scouts of America** - Assistant Cubmaster Troop 321, Den Leader for Tiger Cubs (former), Den Leader for Wolf Scouts (former), Den Leader for Bear Scouts

**First United Methodist Church** - Administrative Board Member (former)

**McAllen Independent School District**; Long Range Facilities Planning Committee (current member) - this Committee studies and recommends to the School Board future construction needs of schools due to population growth or migration.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**U.S. District Court - Southern District of Texas, admitted 1988**

**U.S. Court of Federal Claims, admitted 1988**

**U.S. District Court - Western District of Texas, admitted 1998**

**U.S. Court of Appeals for the Federal Circuit, admitted 1998**

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**Pursuing a Product Liability Action in Texas for an Injury Occurring in Mexico, 5<sup>th</sup> Annual Conference of the Texas-Mexico Bar Association, October 1998, Mexico City, Mexico (see attached).**

13. Health: What is the present state of your health? List the date of your last physical examination.

**Excellent: Ran three marathons in the past 18 months. Last physical exam was July 23, 2001.**

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  
**I have not.**
  2. whether you practiced alone, and if so, the addresses and dates;  
**I have not.**
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**Since my graduation from law school, I have practiced law with the law firm of Atlas & Hall, L.L.P., 818 Pecan, McAllen, Texas. I began in March 1988 as an associate attorney and have been a partner since 1994.**

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

**My practice has been mostly civil litigation, primarily on the defense side of the docket. My cases seem to be fairly evenly divided between commercial litigation, personal injury claims and toxic torts. I have also**

handled several criminal law matters including a significant Federal Court drug conspiracy case.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Typical clients are consumer product manufacturers, financial institutions, various small businesses and insurers. I specialize in commercial and personal injury litigation.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in Court at least once a week on average.

2. What percentage of these appearances was in:
  - a. Federal 20%
  - b. State 80 %
  - c. Other <1%
3. What percentage of your litigation was:
  - a. Civil 98%
  - b. Criminal 2%
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While I have not kept any such records over the years, I estimate at between 18 to 24 trials to verdict, judgment or hung jury. These trials ranged in significance from multiple wrongful death cases to simple contract disputes. I have had trials involving product liability claims, insurance claims, Deceptive Trade Practices claims, contract disputes, slander claims and various other personal injury and commercial claims. On all but a few cases I have been the sole counsel for my client.

5. What percentage of these trials was:
  - a. Jury 90%
  - b. Non-Jury 10%
18. Litigation -- Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or



parites whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

**1. Geraldine Volpe, et al. vs. Autobuses de Oriente S.A. de C.V.**

Suit against bus company, Autobuses de Oriente (ADO), by survivors of an automobile/bus accident near Cancun, Mexico, that resulted in several deaths and many injuries. I defended ADO. The case settled at mediation.

- a. Original Petition Filed October 5, 1998
- b. Civil Action M-98-271; Geraldine Volpe, et al vs. Autobuses de Oriente, S.A. de C.V.; In the United States District Court, Southern District of Texas, McAllen Division  
Honorable Ricardo H. Hinojosa presiding.
- c. John D. Sloan, Jr. (attorney for Plaintiffs)  
**COOPER & SCULLY, P.C.**  
100 Founders Square  
900 Jackson Street  
Dallas, Texas 75202  
(214) 712-9534

Lino H. Ochoa (attorney ad litem for Minor plaintiffs)  
**GRIFFIN, SAENZ AND HILL, P.C.**  
100 Savannah Ave.  
McAllen, Texas 78503  
(956) 971-9446

**2. Ahumada vs. Tule**

This was suit by several Mexican lime growers against Sunkist and its distributor, Tule Distributing, arising out of a lime importation program that went awry. These lime growers from Mexico claimed misrepresentation by Sunkist and its distributor about pricing they would receive for their limes and of quantities to be sold. I represented Tule Distributing and Mr. Teague. The case settled.

- a. Original Petition filed in 1995
- b. Civil Action No. M-95-341; Rolando Olivares Ahumada d/b/a Exportadora De Citricos San Gabriel, Veca Produce, S.A. De C.V. and A.R.I.C.R.I. (Asociacion Rural De Interes Colectivo R.I. De Productores De Citricos De La Region De

Martinez De La Torre vs. Tule Distributing, Inc., Sunkist Growers, Inc. and Alex Teague vs. Antonio Velasquez Cruz, Individually; In the United States District Court, Southern District of Texas, McAllen Division  
Honorable Ricardo H. Hinojosa presiding.

- c. Mr. Keith A. Kelly (co-counsel for Tule Distributing and Teague)  
**RAY, QUINNEY & NEBEKER, P.C.**  
P.O. Box 45385  
Salt Lake, Utah 84145  
Telephone: 801-532-1500

Mr. Michael Bierman (attorney for Sunkist)  
**TUTTLE & TAYLOR**  
355 S. Grande St., 40th Floor  
Los Angeles, California 90071-3101  
Telephone: 213-683-8783

Mr. Jerry Drought  
**MARTIN, DROUGHT & TORRES**  
300 Convent St., Suite 2500  
San Antonio, Texas  
(ATTORNEYS FOR PLAINTIFFS)

3. **Anzaldua v. Habitat Construction**

This was a suit by a prominent doctor against the builder of their home because of numerous construction defects. I represented the Anzalduas. This case was tried to a jury and the Anzalduas recovered their full repair costs, delay damages and attorneys fees from the builder.

- a. Original Petition filed May 20, 1997
- b. Cause No. CL-28,422-C; Mario R. Anzaldua and Ruth Anzaldua vs. Ralph Magana, Individually and d/b/a Habitat Construction; In the County Court at Law No. 3; Hidalgo County, Texas  
Hon. Homero Garza presiding.
- c. Mr. Ruben Ramirez (attorney for Defendants)  
LAW OFFICES OF RUBEN RAMIREZ  
520 Pecan, Suite A  
McAllen, Texas 78501  
Telephone: (956) 618-1200

4. **Rusteburg vs. Blue Cross Blue Shield**

This was a suit by an insurance agent (Rusteburg) against Blue Cross and another insurance agent alleging slander and tortious interference with contract. I represented

Blue Cross. The case was tried to a jury and resulted in a hung jury after two weeks of trial and was ultimately settled.

1. Original Petition filed April 21, 1998
2. Cause No. 9804-1616-C; William Rusteberg, Individually and D/B/A Rusteberg & Associates vs. Arnie Olivarez and David Hall, et al; In the 197th Judicial District Court, Cameron County, Texas  
Honorable Darrell Hester presiding.

3. Mr. Luis Cardenas (attorney for Plaintiff)  
**ELLIS, KOENEKE & RAMIREZ, L.L.P.**  
101 Chicago  
McAllen, Texas 78501  
(956) 682-2440

Mr. Rick Lee Oldenettel (attorney for Olivarez)  
**OLDENETTEL & McCABE**  
1360 Post Oak Blvd., Ste. 2350  
Houston, Texas 77056  
(713) 622-9220

Ms. Miriam Victorian (attorney for Hall)  
**THORNTON, SUMMERS, BIECHLIN, DUNHAM & BROWN, L.C.**  
One Park Place, Suite 500  
100 E. Savannah Ave.  
McAllen, Texas 78503-1244  
(956) 630-3080

5. **Garcia vs. Dillard's**

This was a suit by Ms. Garcia against Dillard's alleging false arrest and malicious prosecution arising out of an alleged shoplifting incident. I represented Dillard's. This case was tried to a verdict. Dillard's won at trial and the judgment was sustained on appeal to the Texas Supreme Court. Although I remained on the pleadings, a lawyer within my law firm's appellate section handled the appeal.

1. Original Petition Filed August 15, 1991
2. Cause No. C-3538-91-C; Sonia Garcia vs. Dillard's Department Stores, Inc. and Sally Aguirre, Individually; 139th District Court, Hidalgo County, Texas.  
Honorable Micaela Alvarez presiding.
3. Mr. Jesse Villalobos (attorney for Plaintiff)  
**VILLALOBOS & VILLALOBOS**  
2221 Primrose St.

McAllen, Texas 78504  
(956) 687-4000

6. **Garcia vs. Blue Cross Blue Shield**

This was a suit by Ms. Garcia against Blue Cross alleging misrepresentation in the marketing of a health insurance policy. I represented Blue Cross. The case settled.

- a. Original Petition filed November 13, 1998
- b. Cause No. 98-11-4458-A; Mary Jo Vergara Garcia vs. Blue Cross Blue Shield of Texas; In the 107th Judicial District Court, Cameron County, Texas Honorable Menton Murray presiding.
- c. Mr. Thomas G. Sharpe, Jr. (attorney for Plaintiff)  
**LAW OFFICE OF THOMAS G. SHARPE, JR**  
107 E. Price Road  
P.O. Box 4648  
Brownsville, Texas 78523  
(956) 546-3783

7. **U.S.A. vs. Aurelio Garcia**

This was a criminal prosecution against Mr. Garcia alleging trafficking in marijuana. Mr. Garcia was caught with over a ton of marijuana in his possession and was part of an interstate drug trafficking ring. I represented Mr. Garcia. Mr. Garcia reached a plea agreement and turned evidence against the alleged co-conspirators.

- a. Criminal Complaint Filed June 15, 1993
- b. Criminal No. M93-121; United States of America vs. Aurelio Garcia, Jr. Honorable Ricardo H. Hinojosa presiding.
- c. **Ms. Laurie Hamlett**  
Assistant U.S. Attorney  
Texas Commerce Bank  
1701 W. Business 83, Suite 305  
McAllen, Texas 78501  
(956) 630-3173

8. **Feliciano Barrones, et al. vs. Ceko Corporation, et al.**

This was a suit by the families of 13 people who were killed and 32 others that were injured when a three story downtown department store collapsed in a heavy rain storm. The case ultimately settled for \$33.1 million. I represented Ceko Corporation who was a manufacturer of steel roofing joists that were alleged to have failed because of a defective design or manufacture.

1. Petition Filed 1988.
2. Cause No. 88-07-4165-C(1); Feliciano Lopez Barrones, et al vs. Amigo Stores, Inc. et al; In the 197<sup>th</sup> Judicial District Court; Cameron County, Texas. Honorable Darrell Hester presiding.

3. **ATTORNEYS FOR PLAINTIFFS:**

Mr. John Skaggs  
**SKAGGS & GARZA**  
 710 Laurel  
 P.O. Drawer 2285  
 McAllen, Texas 78502  
 (956) 687-8203

Mr. Mark Cantu  
**LAW OFFICE OF MARK A. CANTU**  
 1300 N. 10<sup>th</sup> St., Suite 400  
 McAllen, Texas 78501  
 (956) 687-8181

Mr. Brian Jensen  
**JENSEN, ROSEN & STEINBERG, P.C.**  
 440 Louisiana  
 Houston, Texas 77002  
 (713) 224-5500

Mr. Charles Sweetman  
**LAW OFFICE OF CHARLES SWEETMAN**  
 855 E. Harrison  
 Brownsville, Texas 78520  
 (956) 544-4606

Mr. Rene Gomez  
**LAW OFFICE OF RENE GOMEZ**  
 302 Kings Hwy  
 Brownsville, Texas 78521  
 (956) 546-7113

Mr. Richard Palmer  
**LITTLE, PALMER & WILLIAMS**  
 P.O. Box 2830  
 Big Spring, Texas 79721

(915) 267-5211

Mr. Robert Hilliard  
**HILLIARD & GRILLO**  
719 S. Shoreline, Suite 600  
Corpus Christi, Texas 78401  
(361) 882-1612

**ATTORNEYS FOR DEFENDANTS:**

Ms. Linda S. McDonald and Mr. Charles Shaddox  
**SHADDOX, COMPERE, GORHAM & GOOD, P.C.**  
1250 NE Loop 410, Suite 725  
San Antonio, Texas 78209  
(512) 822-2018

Mr. John W. Weber, Jr.  
**SMALL, CRAIG & WEKENTHIN**  
19<sup>th</sup> Floor, NCNB Plaza  
300 Convent  
San Antonio, Texas 78205  
(512) 226-2080

Mr. Robert L. Guerra  
**THORNTON, SUMMERS, BIECHLIN, DUNHAM & BROWN, LLC**  
418 E. Dove  
McAllen, Texas 78504  
(956) 630-3080

Mr. T. Mark Blakemore  
**ROYSTON, RAYZOR, VICKERY & WILLIAMS**  
185 E. Ruben M. Torres, Sr.  
Brownsville, Texas 78520  
(956) 541-9600

Mr. Arthur M. Glover, Jr.  
**HIRSCH, GLOVER, ROBINSON & SHEINESS**  
917 Franklin Street  
Houston, Texas 77002  
(713) 224-8941

Mr. W. Michael Fisher

Mr. Rene O. Oliveira  
**WIECH & BLACK**  
 855 W. Price Rd., Suite 9  
 Brownsville, Texas 78520  
 (956) 542-5666

Mr. F. Van Huseman  
**WHITE, HUSEMAN, PLETCHER & POWERS**  
 2100 The 600 Building  
 P.O. Drawer 2707  
 Corpus Christi, Texas 78403

Mr. F. Edward Barker  
**BARKER & KING**  
 802 N. Carancahua  
 Corpus Christi, Texas 78470

Mr. Ferriel (Kent) C. Hamby, Jr.  
**ADAMS & GRAHAM**  
 222 E. Van Buren, West Tower  
 Harlingen, Texas 78551  
 (956) 428-7495

Mr. Tony Martinez  
**MARTINEZ & BARRERA**  
 1201 E. Van Buren  
 Brownsville, Texas 78520  
 (956) 546-7159

9. **Carruth vs. American Family Life Assurance Corp. (AFLAC), et al.**

This was a suit by several insurance agents against AFLAC and its agent, Mr. Garcia, alleging slander and tortious interference with contract and prospective contract arising out of the awarding of a multimillion dollar group insurance contract to AFLAC that was previously held by the Plaintiffs. I represented AFLAC and Mr. Garcia. The case was tried to a verdict. The Plaintiffs recovered nothing. The jury found in AFLAC's and Mr. Garcia's favor.

1. Original Petition filed October 25, 1993
2. Cause No. C-4635-93-A; Dennis Carruth, Dane Carruth and Donna Benton, Individually and d/b/a Dennis Carruth and Associates vs. American Family Life Assurance Company of Columbus (AFLAC) and Jose Adan Garcia; In the 92nd District Court, Hidalgo County, Texas

Honorable Edward G. Aparicio presiding.

3. Mr. Reynaldo Ortiz (attorney for Plaintiffs)  
**LAW OFFICE OF REYNALDO ORTIZ, P.C.**  
1109 W. Nolana, Suite 204  
McAllen, Texas 78504  
(956) 687-4567

**10. De Los Santos vs. Continental Airlines**

This was a suit by a passenger against Continental Airlines arising out of an on board accident when a beverage cart violently collided with the passenger's knee resulting in allegedly crippling injuries requiring surgical intervention. I represented Continental Airlines. The case settled at mediation.

1. Original Petition filed February 25, 2000
2. Cause No. C-0783-99-F; Daniel De Los Santos vs. Continental Airlines, Inc., et al; In the District Court of Hidalgo County, Texas; 332nd Judicial District. Honorable Mario Ramirez presiding.
3. Ezequiel Reyna, Jr. and San Juanita Campos (attorneys for Plaintiff)  
**LAW OFFICES OF EZEQUIEL REYNA, JR.**  
702 W. Expressway 83, Suite 100  
Weslaco, TX 78596

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

I have been active in the Texas-Mexico Bar Association for many years and am currently a Director. The purpose of the TMBA is to promote cross-border dialogue of common legal issues, attempt resolution of cross-border legal issues, foster a better understanding of the differing legal systems and provide a network of lawyers that act as a resource for answering questions about each other's legal system. I have helped organize annual meetings, recruit members, spoken at an annual conference and frequently assist lawyers from Mexico in questions they have about the legal system in Texas.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**My current partnership interest in my law firm will be repurchased from me over time. I participate in a KEOGH plan through the ABA Members Retirement Program.**

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**I intend to require litigants to complete and file with the Court a Disclosure of Financially Interested Parties as is the current practice by the Court. I intend to recuse myself whenever required by rule or whenever otherwise dictated by the circumstances. I intend to avoid investments in specific companies so that conflicts of interest with parties do not arise. I foresee conflicts of interest arising during my initial service on the Court only in cases involving my current law firm. I intend to recuse myself in any case that may have existed at my firm while I was there and whenever otherwise required by rule or appearance. I will follow the guidelines of the Code of Conduct for United States Judges.**

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**I do not intend to pursue outside employment.**

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**(Please see attached Financial Disclosure Report, Form AO-10)**

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**See attached Financial Statement.**

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**Micaela Alvarez for Judge of 139<sup>th</sup> District Court, Hidalgo County (1996)**  
**Ernest Aliseda for Judge of 298<sup>th</sup> District Court, Hidalgo County (2000)**

**For each of these campaigns, I helped organize the campaign, regularly attended campaign meetings, advised on campaign advertising, made financial contributions, physically assisted in placing yard signs and worked the polls on election day.**

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	70,000	Notes payable to banks - secured	0
U.S. Government securities - add schedule	0	Notes payable to banks - unsecured	0
Listed securities - add schedule	52,000	Notes payable to relatives	0
Unlisted securities - add schedule	0	Notes payable to others	0
Accounts and notes receivable:		Accounts and bill due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable - add schedule	100,000
Real estate owned - add schedule	170,000	Chattel Mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts - itemize:	0
Autos and other personal property	50,000		
Cash value - life insurance	0		
Other assets - itemize:			
Trusts 1, 2 & 3	34,000		
Partnership Interest	20,000		
Partnership Interest (spouse)	50,000	Total Liabilities	100,000
KEOGH and IRAs	110,000	Net Worth	456,000
<b>TOTAL ASSETS</b>	<b>556,000</b>	Total Liabilities and Net Worth	556,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule)	No
On leases or contracts	0	Are you a defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

**Schedule to Financial Statement**

**Listed Securities:**

- 1.QQQ
- 2.LUV
- 3.CWGIX

**Real Estate Owned:**

McAllen, Texas  
(Personal Residence)

**Real Estate Mortgage:**

International Bank of Commerce  
(mortgage on Personal Residence)

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer", regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
  1. **Volunteer Income Tax Assistance**  
I organized a group of lawyers to volunteer their time on weekends in assisting indigent and non-English speaking persons to complete their Federal Income Tax Returns. I organized the printing of posters advertising this program and placed them around the city and arranged for public service announcements to be aired by local Spanish T.V. and radio stations. I estimate that I spent 50 hours on this project.
  2. **Pro Bono Project**  
This local organization provides free or reduced fee legal services to the poor and indigent in our county. It relies on volunteer attorneys to take cases that come in to the project. I have been a volunteer attorney since I became licensed to practice law. During my earlier years of practice I handled many cases; however, I have not received a call in several years. Typically, I would spend about 40 hours a year on these assignments.
  3. **Volunteer Mediator**  
Each year the Hidalgo County Bar Association holds a Settlement Week where litigants can have their cases mediated at a nominal cost by volunteer mediators. I have been a volunteer mediator for many years and typically am assigned one or two cases to mediate each year. These cases take between 6 to 8 hours of my time to mediate and conclude.
  4. **Legal Advisor to American Cancer Society**  
I am currently the legal advisor to the American Cancer Society's chapter in our area. I review contracts and provide general advice pertaining to fund raisers. This occupies several hours of my time each week.
2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**Yes, I was recommended by the Selection Committee of Senators Phil Gramm and Kay Bailey Hutchison. I initially completed and submitted an extensive questionnaire from the Senators' offices. A bipartisan committee of 34 prominent lawyers reviewed all questionnaires submitted and voted on the top eight applicants to fill the two vacancies within the Southern District of Texas. After compiling the votes, the top eight applicants were each interviewed by this committee who ranked the top interviewees. I was then interviewed by both Senators Gramm and Hutchison. Ultimately, Senators Gramm and Hutchison recommended me for nomination by the President to fill the judicial vacancy in McAllen, Texas, within the Southern District of Texas. I was then interviewed by Alberto Gonzalez, Counsel to the President. I have been provided and completed many disclosure forms for the White House, Senate Judiciary Committee and Department of Justice. After completing and returning these disclosures, I was interviewed by the FBI and by the Department of Justice.**

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**No**

5. Please discuss your views on the following criticism involving "judicial activism".

The role of the Federal judiciary within the Federal government, and within society generally has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

1. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
2. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
3. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

4. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
5. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.


Our Constitution established three different branches of government which each serves as a check on the other branches of government. While the judiciary is certainly a check on the other two branches of government and on the body politic, it is ill-equipped to act as an overseer of institutions in our society. The District Court's role should be to decide disputes by applying existing law to the facts before it. That is not to say, however, that the District Court should be afraid of making unpopular decisions based on existing law.

In appropriate circumstances, the District Court may be asked to decide cases that may be unpopular and should be prepared to do so when required by the Constitution, laws or precedent. However, the District Court should only decide cases when there exists a justiciable case or controversy brought by a litigant with appropriate standing and should base its decisions on established precedent. By adhering to the doctrine of *stare decisis*, the Court brings stability, predictability and certainty to the judicial system.

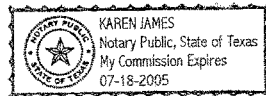
AFFIDAVIT


I, Robert Randall Crane, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Sept. 21, 2001  
Date

  
Robert Randall Crane

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by the said Robert Randall Crane, on this the 21<sup>st</sup> day of September, 2001, to certify which witness my hand and seal of office.



  
Notary Public, State of Texas



<b>AO-10 (w)</b> Rev. 1/2000		<b>FINANCIAL DISCLOSURE REPORT</b> <b>Nomination Report</b>	<i>Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-113)</i>
<b>1. Person Reporting</b> <i>(Last name, first, middle initial)</i> Crane, Robert R.	<b>2. Court or Organization</b> S.D. Texas -- McAllen Division	<b>3. Date of Report</b> 09/21/2001	
<b>4. Title</b> <i>(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)</i> U.S. District Judge (nominee)	<b>5. Report Type (check type)</b> X Nomination, Date 09/21/2001 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 09/21/2001	
<b>7. Chambers or Office Address</b> 818 Pecan McAllen, TX 78501		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>	
<b>Reviewing Officer</b>		<b>Date</b>	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** *(Reporting individual only; see pp. 9-13 of Instructions.)*

POSITION	NAME OF ORGANIZATION / ENTITY
NONE (No reportable positions.)	
1 Partner	Atlas & Hall, L.L.P.
2 Director	American Cancer Society -- Upper Valley Unit
3 Custodian	Trust #1

**II. AGREEMENTS** *(Reporting individual only; see pp. 14-16 of Instructions.)*

DATE	PARTIES AND TERMS
NONE (No reportable agreements.)	
1 2001	Atlas & Hall, L.L.P. (anticipated repurchase of partnership interest)
2 1995	ASA Members Retirement Plan (Atlas & Hall, L.L.P.'s KEOGH plan)
3	

**III. NON-INVESTMENT INCOME** *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
NONE (No reportable non-investment income.)		
1 1999	Atlas & Hall, L.L.P.	135,000
2 2000	Atlas & Hall, L.L.P.	160,000
3 2001	Atlas & Hall, L.L.P.	100,000
4 2000	Crane Family Partnership (Spouse)	

FINANCIAL DISCLOSURE REPORT Name of Person Reporting Date of Report  
Crane, Robert R. 09/21/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

SOURCE	DESCRIPTION
NONE (No such reportable reimbursements.)	
1 (exempt)	
2	
3	
4	
5	
6	
7	

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

SOURCE	DESCRIPTION	VALUE
NONE (No such reportable gifts.)		
1 (exempt)		
2		
3		

**VI. LIABILITIES**

(Includes those to spouse and dependent children. See pp. 33-35 of Instructions.)

CREDITOR	DESCRIPTION	VALUE CODE*
NONE (No reportable liabilities.)		
1		
2		
3		
4		
5		
6		

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL STATEMENT REPORT		Name of Person Reporting		Date of Report
		Crane, Robert R.		09/21/2001
VII. FICA 1 INVESTMENTS AND TRUSTS— Income, value, transactions <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>				
A.	B.	C.		D.
Description of Assets (including trust assets)	Income during reporting period	Gross value at end of reporting period		Transactions during reporting period
Place "(X)" after each asset exempt from prior disclosure.	(1)	(2)	(1)	(2)
	Amount (A-H)	Type (e.g., dividend, rent or interest)	Value (J-P) Code (Q-W)	Type (e.g., buy, sell, partial sale, merger, redemption)
If not exempt from disclosure				
	(2)	(3)	(4)	(5)
	Date:	Value	Code	Code
	Month- Day	Gain (J-P)	Code (A-H)	Identify buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)				
1 Greenwood Trust	C	Interest	L	T exempt
2 Security 1st Federal C. U.	A	Interest	J	T exempt
3 Trust #1	A	Interest	J	T exempt
4 Trust #2	A	Dividend	J	T exempt
5 -- Alliance Inst. Reserves				exempt
6 -- QQQ				exempt
7 -- North East ISD Bonds				exempt
8 -- RBCGX				exempt
9 Trust #3	A	Interest	J	T exempt
10 Texas State Bank (IRAs) (CDs)	A	Interest	J	T exempt
11 Pension Financial Services	B	Dividend	L	T exempt
12 --Alliance Municipal Money Mkt				exempt
13 -- QQQ				exempt
14 -- LUV				exempt
15 -- CWGIX				exempt
16 ABA Members Retirement	D	Dividend	M	T exempt
17 Atlas & Hall Partnership Interest			K	T exempt
1 net/gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more				
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more				
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated				

Name of Person Reporting Date of Report

FINANCIAL DISCLOSURE REPORT Crane, Robert R. 09/21/2001

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Name of Person Reporting Date of Report

FINANCIAL DISCLOSURE REPORT Crane, Robert R. 09/21/2001

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Custodian Trust #2	
5	Custodian Trust #3	

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Crane Family Partnership (Spouse)	

FINANCIAL DISCLOSURE REPORT  
Name of Person Reporting Crane, Robert R. Date of Report 09/21/2001  
IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 101 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

9-21-01

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator FEINGOLD. We welcome all of your guests and the guests of the other nominees and I will begin with questioning. Rest assured it is not likely to be as long as the previous session.

Judge Beistline, you are a member of the Executive Board of Boy Scouts of America. On February 6, 2002, the Boy Scouts of America Executive Board voted to "reaffirm its view that an avowed homosexual cannot serve as a role model for the traditional moral values espoused in the Scout oath and law and that these values cannot be subject to local option choices." Did you participate in the decision as a member of the Executive Board?

Judge BEISTLINE. No.

Senator FEINGOLD. If so, how did you vote? You did not?

Judge BEISTLINE. No. In fact, it sounds like I was more involved—I was on the executive committee for the Fairbanks organization. I was not on any national committee at all.

Senator FEINGOLD. And there was no such vote—

Judge BEISTLINE. There was no vote, no discussion, frankly, ever on that subject in Fairbanks.

Senator FEINGOLD. Do you support the decision of the Boy Scouts of America to use sexual orientation as a basis for determining whether an individual is qualified to be a leader?

Judge BEISTLINE. Well, I will say this, that I do not believe in discrimination of any type. I have not truly given—I was not involved in that decision and, frankly, cannot give you an exact description of what exactly the program even is, whether it is a "don't ask, don't tell" type of program or whatever. I can say that, as a judge, regardless of what the position would be, I would uphold the law as indicated by the Supreme Court. But I do want to make it clear. I really have no—I do not have any bias towards any group based on race, religion, sexual preference, or anything of that nature.

Senator FEINGOLD. All right, Judge. In *Brooks v. Wright*, which you decided in 1999, various citizens and community organizations sought to remove an initiative prohibiting the use of snares in trapping wolves from the November 1998 ballot. Given your experience in that case, what deference do you think courts should give to citizen efforts to manage natural resources through direct democracy ballot initiatives? Do you feel that Federal natural resources trustees, such as Fish and Wildlife Service, have exclusive jurisdiction over the natural resource that they manage?

Judge BEISTLINE. I have a strong belief in and support for the initiative process. It is something used frequently in Alaska in a wide variety of subjects. I guess it is part of the Alaska psyche. We have initiatives all the time. It makes the politics exciting and keeps people involved, so I strongly support that process.

In this particular case, I was confronted with a conflict between the initiative process, on the one hand, and a constitutional provision that appeared to make management of fish and game exclusive or place it exclusively with the legislature, and I agonized back and forth, actually did not have a great deal of time, but at the time I made the decision, my conclusion was the legislature could not fulfill its mandate if others were involved in setting rules and regulations. The Supreme Court told me I was wrong, and it is real clear now.

I understand and I think all the judges—I talked to colleagues as I was trying to make that decision. We have got the initiative. You hate to get involved in that. On the other hand, you have got the Constitution that says the legislature is the one involved in this. What do you do when they conflict? I made a decision. The Supreme Court made it real clear it was the wrong decision, but they agreed with me in two areas. First of all, they agreed that the legislature was responsible for the management of fish and game, (A), and (B) that it required expertise. They disagreed with me and said it was not an exclusive area, and so I now understand.

I will say two things. That helped illustrate that judges are not perfect, because we are corrected from time to time and I was corrected in that case. But the second thing I want to point out is that, generally, I do not make the same mistake twice. If that issue is ever presented, I will not be ruling the same.

Senator FEINGOLD. Fair enough, Judge.

Mr. Bury, you have an extensive career as a civil litigator but you appear to have had no experience handling criminal or immigration cases. Federal Court dockets, particularly in the Southwest, are overflowing with complex criminal cases, many of which are immigration related. Please tell us what steps you have taken or will take to prepare yourself for handling criminal and immigration cases.

Mr. BURY. Well, thank you, Mr. Chairman. One of the attractive parts of this job was that I would be a student of the law again and I plan to do that. Hoping not to sound presumptuous, I have already started doing that by a study of the criminal rules and code. I have also been offered graciously mentorship from two presiding District Court judges in the District of Arizona to help me and to mentor me. But primarily, it would be an educational process that I am excited about and looking forward to.

Senator FEINGOLD. I notice that your long professional career as a lawyer has focused apparently exclusively on civil matters with a concentration of work for insurance carriers and large corporations defending against medical and legal malpractice, product liability, and other tort claims. Now, judges often get reputations as being pro-defense or pro-plaintiff based on the kinds of clients they had before taking the bench. What assurances can you give the committee that if you are confirmed, you will be fair to both plaintiffs and defendants in all types of civil claims?

Mr. BURY. I will pledge to that. I have served as an arbitrator decision maker in personal injury cases primarily and I do not think in that capacity I have been considered defense-minded, as you put it. I think I was considered fair-minded and would hope to take that to the bench.

Senator FEINGOLD. Thank you, Mr. Bury.

Mr. Crane, in your questionnaire, you reported to the committee that only two percent of your legal practice experience has focused on criminal matters. As you know, a significant portion of the Federal judicial docket, particularly in courts located in border towns, deals with criminal matters. In fact, in a September 22, 2001, article in the Houston Chronicle, you were quoted as saying that the new judgeship position to which you have been nominated is needed to handle the “greater number of drug and immigration cases

flooding the courts.” Can you discuss your experience with and familiarity with criminal law and procedure, and if confirmed, how do you plan to prepare yourself for this new type of workload?

Mr. CRANE. As I mentioned in my questionnaire, approximately two percent of my practice has been in the criminal area. I have handled several criminal cases, one of which was a very large case in Federal Court, a large drug case.

I intend to study the criminal law further. I certainly do not claim to be an expert in it. I have, again, not to sound presumptuous, but I have already been invited and have been mentoring with the current sitting judge within the Southern District. I have also undertaken some continuing legal education in the criminal background to further learn criminal procedure. I have sat in the courtroom and tried to observe and already commenced learning that area.

With respect to the immigration, I am blessed that my father is the only board-certified immigration lawyer within South Texas and so I have been raised all my life around the immigration issues and I am fairly familiar with them.

Senator FEINGOLD. Fair enough. I am going to ask one more question of all three of you. Some of the most beloved judges in our history are judges who have stood up to the popular sentiment to protect the rights of minorities or people whose views made them outcasts or pariahs. Please tell us one instance in your professional career where you took an unpopular stand or represented an unpopular client and stood by it under pressure.

Judge Beistline?

Judge BEISTLINE. I can think of several, but I had an occasion fairly early in my career to take a pro bono case where I did not have a—actually, it was a criminal case where I did not have a great deal of experience in that, but I was appointed by the presiding judge to represent this young man who had been charged with murder. I had not at that time had much experience in criminal defense work and I called the presiding judge up and I said, “Why did you appoint me?” And he said, “Do not worry about it. This fellow is guilty.” And so there I went, and that was the motivation I had to go forward.

Six months later, after a very intense trial, the young man was acquitted of the charges, and that involved issues that I would not take the time to explain to you, but it was a shoot-out on the Canadian border that had all the excitement you can imagine, and it was not a popular position to take. It taught me a great deal about life, about people, and about the legal system, and it is something that has been part of my experience ever since that time.

Senator FEINGOLD. Thank you, Judge.

Mr. Bury?

Mr. BURY. Thank you. I think one of the most difficult cases I had in that connection would have been representing pro bono my church in the removal of an individual from its property. This individual continued to demonstrate and it involved issues of freedom of speech, freedom of religion and expression and was somewhat controversial. I think I got a lot out of that experience.

Senator FEINGOLD. Mr. Crane?



Mr. CRANE. I can think of two, and I guess I will pick the one that is probably less controversial and that is I currently represent some defendants in a large toxic tort case where the community and various neighborhoods have corralled public support, have made a big media effort in the problems that exist in that neighborhood and there has been a lot of attention in the newspaper and TV about what the alleged defendants did to contaminate that neighborhood. My client is not a popular one, but every client is entitled to a defense and I have been and continue to defend my client vigorously in that matter.

Senator FEINGOLD. Thank you.

I want to congratulate all of you. Although nothing is ever absolutely for sure in this place, your prospects for confirmation are very bright and I appreciate your coming.

At this point, we will recess this hearing subject to the call of the chair. This panel is excused and we will resume probably around 2:30 with Judge Smith and Senator Biden and any other Senators who have additional questions. The hearing is recessed.

[Whereupon, at 12:42 p.m., the committee recessed, subject to the call of the chair.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

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Pittsburgh, PA 15234-0744  
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Fax (412) 343-0192  
E-mail: academytla@aol.com

## ACADEMY OF TRIAL LAWYERS OF ALLEGHENY COUNTY



January 29, 2002

2001-2002

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Merle Kramer Mermelstein

The Honorable Patrick Leahy  
United States Senate  
433 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

Please accept this as a recommendation on behalf of the Academy of Trial Lawyers of Allegheny County for the confirmation of Chief Judge D. Brooks Smith to the United States Court of Appeals for the Third Circuit.

I am a president of the Academy, a diverse group of the local attorneys whose purpose is to advance the causes of fairness, civility and competence in the practice of law. Our membership is selected on the basis of achievement, and the best trial lawyers -- representing both plaintiffs and defendants -- unite within our group in a spirit of collegiality and service. In the tradition of the Athenian academies of antiquity, our gatherings are always a forum for frank discussion and critical thought, undiluted by ideology, politics and personal agendas. We are concerned solely with the practice of law, believing that competence and diligence are the best ways to preserve fairness and truth-seeking, the two highest callings of our profession.

The Academy gives Judge Smith its highest recommendation. He is committed to excellence, collegiality and fairness in the law. Judge Smith exhibits grace, a steady temperament, preparedness, concern for the parties, and diligence from the bench. It is rare for a judge to be collectively acclaimed within the bar that he serves, but I have heard attorneys from both sides of the caption praise Judge Smith for his performance on the bench.

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E. J. Strassburger  
Kerry A. Kearney

\* Deceased

The Honorable Patrick Leahy  
January 29, 2002  
Page 2

As the Senate enters deliberations upon Judge Smith's nomination, therefore, please know that the lawyers who appear before him sincerely and enthusiastically recommend his confirmation.

Very truly yours,



Dennis St. J. Mulvihill

DSJM/jlg

2002/02/25 08:58:44 Babst, Calland, Clements, Zomnir Page:2/4

February 12, 2002

VIA FEDERAL EXPRESS MAIL

The Honorable Joseph R. Biden  
221 Russell Senate Office Building  
Washington, D.C. 20510

RE: Nomination of Chief Judge D. Brooks Smith

Dear Senator Biden:

We are writing to you to most highly recommend and support the nomination of the Honorable D. Brooks Smith, Chief Judge of the United States District Court for the Western District of Pennsylvania, to the United States Court of Appeals for the Third Circuit.

We are submitting this joint letter because we believe, as women members of the Academy of Trial Lawyers of Allegheny County, that it is imperative that we make you aware of our consistently positive experiences practicing before Judge Smith during the last thirteen years that he has served on the federal bench.

In every aspect of litigating and trying cases before Judge Smith, he has always been extremely respectful of the women lawyers who appear before him. He shows similar respect to women litigants and witnesses. At all times, he has shown genuine concern about women's issues. He also acted promptly when he was advised of the problem of certain judges refusing to move trial dates to accommodate pregnant women trial lawyers. Through his diplomatic efforts, this issue was effectively addressed and a new policy implemented. Furthermore, he has made sure that there is gender equity on all committees established by Judge Smith regarding practice in the Western District.

It has been our experience practicing before Judge Smith that he is always prepared, well-versed in the law and hard-working. He is intellectual, scholarly and fair. Judge Smith has consistently shown impressive judicial temperament and his demeanor is impeccable. He is always compassionate towards and respectful of all those who come before him. Most importantly, we have found Judge Smith to be a person of the utmost integrity.

Judge Smith has worked diligently with women members of the Academy of Trial Lawyers of Allegheny County on a variety of issues and projects. For example, in early September 2001, Judge Donetta Ambrose (Western District of Pennsylvania) and two of the signators of this letter worked with Judge Smith, at his request, to design and conduct a mock jury selection program for four judges who were visiting from Russia to learn about the American jury system. He repeatedly conveyed his sincere appreciation of this effort given the demands of our respective practices.

2002/02/25 08:58:44 Babst, Calland, Clements, Zomnir Page:3/4

Honorable Joseph R. Biden  
 February 12, 2002  
 Page 2

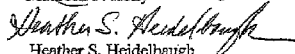
It is critical, we believe, to point out to you that Judge Smith has been consistently involved in efforts and programs to address the concerns and needs of women and minorities. Most notably, he has served on Chief Judge Dolores K. Sloviter's (Third Circuit) Committee on the Treatment of Women in the Courts and related Task Force on Race and Ethnicity as well as the Governor's Advisory Committee to Oversee Implementation Plan for Equal Opportunity in Higher Education. He has also served on the boards of: Blair County Legal Services Corporation; Family and Children's Services of Blair County; the Domestic Abuse Project of Blair County; the Society for Crippled Children and Adults as well as the boards of many other community service programs.

As the women trial lawyers who practice before Judge Smith, we resoundingly support his nomination to the United States Court of Appeals for the Third Circuit and ask that the Judiciary Committee promptly proceed with conducting a confirmation hearing.

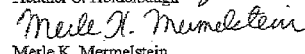
Very truly yours,



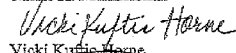
Maureen P. Kelly



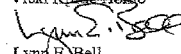
Heather S. Heidelbaugh



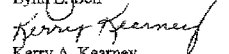
Marle K. Mermelstein



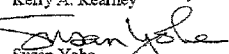
Vicki Kufie Horne



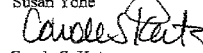
Lynn E. Bell



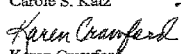
Kerry A. Kearney



Susan Yeh


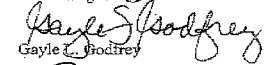
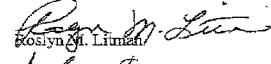
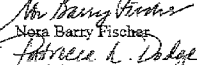
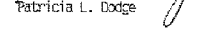


Carole S. Katz



Karen Crawford

Honorable Joseph R. Biden  
February 12, 2002  
Page 3

  
Kate J. Fagan  
  
Gayle L. Godfrey  
  
Roslyn M. Luman  
  
Nora Barry Fischer  
  
Patricia L. Dodge

MPK/sih

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
600 U.S. POST OFFICE & COURTHOUSE  
PITTSBURGH, PA 15219-1000

CHAMBER OF  
JUDGE CONETTA V. AMBROSE

(412) 308-7300

February 22, 2002

Senator Patrick Leahy  
UNITED STATES SENATE  
433 Russell State Office Building  
Washington DC 20510

Senator Orrin G. Hatch  
UNITED STATES SENATE  
104 Hart Office Building  
Washington DC 20510

Dear Senators Leahy and Hatch:

I write to set the record straight and to address the allegations of unethical conduct leveled at my colleague, the Honorable D. Brooks Smith, in the case of SEC v. John G. Black, et al., C.A. No. 97-2257.

This case originated in the United States District Court for the Western District of Pennsylvania on September 26, 1997, when the Honorable William Standish, acting for an absent Judge Smith, granted, at the request of the SEC, a Temporary Restraining Order freezing all assets under Defendants' control and over which Defendants exercised actual or apparent investment or other authority. Previously, after investigation, the SEC had determined that Defendants, who were investment advisors, had concealed massive trading losses from their clients, who were mostly school districts. Judge Standish also appointed a Trustee.

Judge Smith returned to preside over the case in October, 1997 for twenty-seven days. During that time, the Trustee began his investigation. The Trustee identified four categories of investment relationships between Defendants and their clients, three of which involved securities held in clients' accounts and one which involved securities held in a pooled account in Defendants' names at Mid-state Bank.

Clients whose securities were held in their own accounts opposed the Temporary Restraining Order. However, at that time (October, 1997) the Trustee did not know whether funds deposited in the pooled account at Mid-State Bank had been used to benefit the other clients. Simply stated, no one - not the Trustee, not the court nor the SEC - knew what involvement the clients had in Defendants' fraudulent scheme.

To ease the financial burdens of the school district clients whose funds were held in their own accounts, Judge Smith, at the request of the SEC and the Trustee,

FEB-22-22 15:48 FROM: SCHNADER HARRISON

ID: 4126422958

PAGE 3/5

SENATOR PATRICK LEAHY  
 SENATOR ORRIN HATCH  
 FROM: HON. DONETTA W. AMBROSE, U.S.D.J.  
 FEBRUARY 22, 2002  
 PAGE 2

modified the freeze on October 27, 1997, allowing fifty percent of the market value of the funds to be distributed to clients whose funds were deposited in accounts in their own names. Given the uncertainty of the situation at that time, it was prudent to distribute only fifty percent of the funds.

At the first suggestion of involvement on the part of Mid-state, in late October, 1997, Judge Smith recused, without motion.

I then got the case and allowed the Trustee to continue and conclude his investigation into whether Defendants used funds deposited in Defendants' Mid-State account to benefit other clients. After the Trustee's investigation and report, and seven months later, I concluded that the Trustee had found no evidence that the Defendants had control over funds maintained in accounts held in the clients' names as opposed to those held in Defendants' names. Because I now had information that was not available to Judge Smith in October, 1997, I released those funds from the Temporary Restraining Order.

The Court of Appeals for the Third Circuit affirmed (163 F.3d 1988 (1998)), that I was correct in concluding that the Trustee's investigation had not adduced any proof of wrongdoing on the part of those clients whose funds were maintained in accounts in their own names.

There was never any suggestion by me or the Court of Appeals that Judge Smith acted inappropriately or unethically. Rather, he acted prudently and cautiously and at a time when no one knew the extent of the involvement of any or all of Defendants' clients, or whether Defendants had used funds deposited in the pooled account to benefit clients whose funds were held in other accounts. My decision came only after seven months of investigation by the Trustee. If I were presiding in October, 1997, I would have ruled the same way Judge Smith ruled. The allegations of unethical conduct in the context of this case are without foundation.

If I can provide further clarification, do not hesitate to contact me.

Sincerely,

Donetta W. Ambrose,  
 U.S. District Judge





Recommended by lawyers  
and clients across Pennsylvania

January 31, 2002

The Honorable Patrick Leahy  
United States Senate  
433 Russell Senate Offices  
Washington, D.C. 20510

H. Reginald Belden, Sr.  
(1907 - 1993)  
H. Reginald Belden, Jr.  
Dennis N. Persin  
Robert L. Johnston  
John K. Greiner  
Jeffrey D. Monzo  
James A. Wells

**Re: Nomination of  
The Honorable D. Brooks Smith to  
The Court of Appeals for the Third Circuit**

Dear Senator Leahy:

As you know, the Honorable D. Brooks Smith, Chief Judge of the Federal District Court for the Western District of Pennsylvania, has been nominated for a vacancy on the United States Court of Appeals for the Third Circuit.

I write in support of his confirmation by the United States Senate.

Judge Smith has distinguished himself as a district judge and, most recently, as Chief Judge. As a trial lawyer, I have appeared before Judge Smith and found him to be fair and evenhanded, of good temperament, a hard worker, as well as knowledgeable in the law. As importantly, Judge Smith is personable and treats litigants and lawyers who appear before him well and equally and has a congenial relationship with his colleagues on the bench.

I am the current President of the Pennsylvania Bar Association and, therefore, have had substantial opportunity to elicit (and hear unsolicited) comments from many members of the bar who are familiar with the work of Judge Smith and who have tried cases before him. I believe that there is a unanimity of opinion that Judge Smith would be a credit to the Circuit Court and to the Federal Judicial system. The Pennsylvania Bar

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Association does not endorse nominees for the Federal bench and, therefore, I do not speak in behalf of the Association. However, my position has enabled me to make the observations about which I write.

As a Fellow of the American College of Trial Lawyers, I have had the opportunity to observe good and not so good lawyers and judges. Judge Smith gets my high marks from every respect.

You should also know that he is generous with his time in the education of lawyers and judges.

I encourage you to set a confirmation hearing as soon as possible and fill the vacancy on the Court of Appeals for the Third Circuit by confirming the Honorable D. Brooks Smith.

I thank you very much for your attention to this very important matter.

Sincerely,

H. Reginald Belden, Jr.

HRBjr/dmw

Cc: The Honorable Arlen Specter

**OPENING STATEMENT**

Senator Maria Cantwell  
Hearing on Nominations  
February 26, 2002

Mr. Chairman, thank you again for continuing to hold these hearings, and ensuring that the President's nominees move through the process. Today we are considering four nominees, including the nominee to the Third Circuit Court of Appeals, Judge D. Brooks Smith. As chief judge for the Western District of Pennsylvania, Judge Smith has presided over a number of diverse cases. While I am sure he is a qualified judge, I nevertheless have some concerns over his record, particularly his handling of cases brought by plaintiffs in the gender discrimination context and his very strong views in opposition to the Violence Against Women Act. I am also troubled by a pattern of reversed decisions and by views expressed in his opinions that seem to place him at the extreme end of the ideological spectrum.

I hope to hear answers that allay these concerns and to give Judge Smith the full opportunity to address these issues before the committee today. In answering these and other questions, I hope that he will be able to alleviate my concerns and allow this committee to make a fair assessment of his suitability. Thank you.

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February 25, 2002

VIA FACSIMILE ONLY

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20530

Re: The Honorable D. Brooks Smith

Dear Senator Leahy:

I appeared for the School District of Lancaster and the Penn Manor School District in the action filed by the Securities and Exchange Commission against John Gardner Black, Devon Capital Management, Inc. and Financial Management Sciences, Inc.

I participated in the case during the time it was pending before Judge D. Brooks Smith. At no time did I believe that Judge Smith acted with respect to this case, in any manner inconsistent with his usual high degree of integrity, forthrightness and insight. His recusal from the case and its transfer to Pittsburgh occurred in a timely way when the appearance of a potential conflict first became evident. Judge Smith's rulings in the case prior to his recusal were entirely appropriate.

I have had the privilege of appearing before Judge Smith in many matters since his appointment to the Federal bench. He has always demonstrated the utmost integrity in

SPENCE, CUSTER, SAYLOR, WOLFE & ROSE

The Honorable Patrick J. Leahy  
Page Two  
February 25, 2002

the handling of the cases in which I have been involved. He is always informed, impartial and extremely forthright with counsel and the parties.

I have the highest respect for Judge Smith's work on the District Court. I am certain that he would distinguish himself on the Third Circuit Court of Appeals.

Thank you for your attention to this matter.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Ronald P. Carnevali, Jr.", written in a cursive style.

Ronald P. Carnevali, Jr.

RPC:slo  
cc: The Honorable Orrin G. Hatch

Pittsburgh, PA  
Monday  
February 25, 2002



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## Letters to the editor, 02/22/02

Friday, February 22, 2002

### Judge Smith's rulings in no way hint at favoritism toward bank in Black case



post-gazette.com  
Headlines  
by E-mail

As lead plaintiffs' counsel in various litigations relating to John Gardner Black, I wanted to share my firsthand views respecting the Post-Gazette's front-page article criticizing Judge D. Brooks Smith's rulings in the Securities and Exchange Commission case against Black (whose scheme resulted in losses of about \$70 million to school districts and others) ("Black Case Could Sideswipe Nominee," Feb. 20). Unfortunately, the article is based on a mistaken fact, and therefore is unfairly critical of Judge Smith.

The article implies that Judge Smith should have realized sooner that Mid-State Bank was a potential defendant and therefore should have recused himself sooner due to stock investments in the bank and his wife's job in another area of the bank. The article states incorrectly that Judge Smith ruled in a manner that "would have effectively reduced Mid-State's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State." Respectfully, the Post-Gazette has misconstrued Judge Smith's ruling.

Specifically, on Oct. 27, 1997, Judge Smith entered an order approving the joint motion of the trustee (Richard Thornburgh) and the SEC to make an interim distribution of assets over which Black's companies (Devon or FMS) had investment authority. Under this order, those with funds held at banks other than Mid-State Bank, including those with repurchase agreements, would receive up to 50 percent of the market value of the funds held in their name, while those with funds in the pooled FMS account at Mid-State Bank would receive 50 percent of their pro rata share of the market value of such pooled funds.

This ruling therefore did not shift losses between Mid-State Bank customers and customers of other banks, but simply allowed all school districts to receive, on an interim basis, one-half of the current actual value of their funds in their respective banks. In fact, because the approximate \$70 million collateral shortfall investment was in the FMS account at Mid-State Bank, school districts with deposits at Mid-State Bank would receive only about 25 percent of their investments in the interim distribution, while those with accounts elsewhere would receive 50 percent.

The Oct. 27, 1997, order provided a 10-day period to file objections to the scheduled distribution amounts. Several objections to the specific amounts were filed, as Judge Smith contemplated, and on Dec. 4, 1997, U.S. District Judge Donetta Ambrose entered an order that was virtually identical to Judge Smith's Oct. 27 order, except for technical corrections in the distribution schedule. In upholding Judge Ambrose's order, the 3rd U.S. Circuit Court of Appeals was not in any sense reversing Judge Smith. The Post-Gazette's conclusions that Judge Smith's ruling "did not stand" and that Judge

Ambrose ruled that Judge "Smith had improperly combined the Mid-State and non Mid-State assets" are erroneous.

This firm has since Oct. 15, 1997, played a lead and ongoing role in numerous litigations in state and federal courts (including the bankruptcy court) involving the Black fiasco, and our co-counsel in the Mid-State Bank litigation, Richard R. Nelson II and Cohen & Grigsby, was involved from the outset, immediately after the SEC obtained the asset freeze on Sept. 26, 1997. From this extensive involvement, we are not aware of any impropriety or even appearance of impropriety on the part of Judge Smith, and contrary to the Post-Gazette story, Judge Smith has made no rulings in these proceedings that would even hint that he favored Mid-State Bank.

**RICHARD A. FINBERG**  
Malakoff Doyle & Finberg  
Downtown

---

Malakoff Doyle & Finberg, P.C.

Telephone  
(412) 281-8400

Attorneys at Law  
Suite 200  
The Fryck Building  
Pittsburgh, Pennsylvania 15219-6003

Fax  
(412) 281-3262

February 25, 2002

Via Fax (202) 228-0861

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D. C. 20530

Re: Nomination of D. Brooks Smith to Third Circuit Court of Appeals

Dear Senator Leahy:

This letter is written to share my firsthand views respecting Honorable D. Brooks Smith's rulings relating to a case brought by the Securities and Exchange Commission against John Gardner Black ("Black"). Specifically, this letter addresses seriously inaccurate allegations recently made in the Pittsburgh Post-Gazette ("Black case could sideswipe nominee," Feb. 20, 2002). The article is based upon mistaken facts, and therefore, unfairly criticizes Judge Smith.

Black is presently serving a 41 month prison term as a result of his operation of a Ponzi scheme through his companies, Devon Capital Management, Inc. ("Devon") and Financial Management Sciences, Inc. ("FMS"), which caused approximately \$70 million of losses to school districts and others. I have since October 15, 1997 been lead or co-lead plaintiffs' counsel in multiple litigations relating to Black, Devon and FMS in the state and federal courts, and have also served as special litigation counsel to the trustee in bankruptcy for the Devon and FMS bankruptcy estates. Our co-counsel in the Mid-State Bank litigation, Richard R. Nelson II and Cohen & Grigsby, were involved from the outset, immediately after the SEC obtained the asset freeze on September 26, 1997. I am personally familiar with the various court orders and legal proceedings in these cases.

I am not, of course, privy to the oral communications to Judge Smith from Richard Thornburgh or his counsel, Mark Rush, so I cannot comment specifically as to



The Honorable Patrick J. Leahy  
 February 25, 2002  
 Page 2

those communications. I can, however, address the written court orders in this case, and the errors in the Post-Gazette story as it relates to those orders. I should note that I have had no personal prior involvement in these nomination proceedings, and my reason for writing is simply to set the record straight so that the Committee on the Judiciary can base its decisions on accurate and objective information.

The Post-Gazette implies that Judge Smith should have realized sooner that Mid-State Bank was a potential defendant, and therefore, should have recused himself sooner due to stock investments in the bank and his wife's job in another area of the bank. The article states incorrectly that Judge Smith ruled in a manner that "would have effectively reduced Mid-State Bank's liability and forced districts with assets elsewhere to subsidize the losses of districts whose assets were held at Mid-State." However, the Post-Gazette has misconstrued Judge Smith's ruling.

Specifically, on October 27, 1997, Judge Smith entered an order approving the Joint Motion of the Trustee (Richard Thornburgh) and the SEC to make an interim distribution of assets over which Black's companies (Devon or FMS) had investment authority. Under this Order, those with funds held at banks other than Mid-State Bank, including those with repurchase agreements, would receive up to 50% of the market value of the funds held in their name, while those with funds in the pooled FMS account at Mid-State Bank would receive 50% of their pro rata share of the market value of such pooled funds. This ruling therefore did not shift losses between Mid-State Bank customers and customers of other banks, but simply allowed all school districts to receive, on an interim basis, one-half of the current actual value of their funds in their respective banks. In fact, because the approximate \$70 million collateral shortfall was in the FMS account at Mid-State Bank, school districts with deposits at Mid-State Bank would receive only about 25% of their investments from the interim distribution, while those with accounts elsewhere would receive 50%.

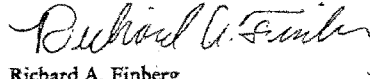
The October 27, 1997 Order provided a 10-day period to file objections to the scheduled distribution amounts. Several objections to the specific amounts were filed, as contemplated in Judge Smith's Order, and on December 4, 1997, Judge Donetta Ambrose entered an order that was virtually identical to Judge Smith's October 27 Order, except for technical corrections in the distribution schedule. In upholding Judge Ambrose's distribution orders in a later appeal, the Third Circuit Court of Appeals was not in any sense reversing Judge Smith. The Post-Gazette's conclusions that Judge Smith's ruling "did not stand", and that Judge Ambrose ruled that Judge "Smith had improperly combined the Mid-State and non Mid-State assets" are totally erroneous.

The Honorable Patrick J. Leahy  
February 25, 2002  
Page 3

In sum, from our extensive involvement in this litigation, we are not aware of any impropriety or even appearance of impropriety on the part of Judge Smith, and contrary to the Post-Gazette story, Judge Smith has made no rulings in these proceedings that would even hint that he favored Mid-State Bank.


Very truly yours,

MALAKOFF DOYLE & FINBERG, P.C.



Richard A. Finberg

cc: The Honorable Orrin G. Hatch  
Ranking Member, Committee on the Judiciary  
(via fax: (202) 228-1698)



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## Forum: In defense of Judge D. Brooks Smith

The nomination of a broadly admired federal judge in Pittsburgh is being challenged because of political pique. The case made by the Community Rights Counsel has no merit

Sunday, February 17, 2002

By Ken Gormley and Frederick W. Thieman

A Washington-based public interest coalition has launched an attack on Chief U.S. District Judge D. Brooks Smith, a Republican sitting in Pittsburgh, who has been nominated by President Bush to fill a vacancy on the 3rd U.S. Circuit Court of Appeals. The byzantine process of appointing federal judges usually does not grab public attention. But he assured that the outcome of this case will have a dramatic impact on every citizen in Western Pennsylvania.

Our federal court handles the most serious drug cases, white collar crimes, constitutional and environmental matters, and high-stakes suits involving out-of-state businesses. For years, though, it has been struggling to operate on two cylinders, due to insidious political warfare that has left our region with a growing number of unfilled vacancies.

In the latest shot across the bow, the Community Rights Counsel (aligned with Democratic interests), has written a letter to key Senate Judiciary Committee members, seeking to sink Judge Smith's nomination.

Unfortunately, what is couched as a critique of Judge Smith's record is a stiff dose of political payback. It unfairly impugns the reputation of a sterling member of our federal bench -- and perpetuates a longstanding political grudge match that cannot possibly benefit the citizens here.

As Democratic members of the bar in Western Pennsylvania, we strongly urge the Community Rights Counsel to reconsider this dangerous political strategy.

**Ken Gormley is a professor at Duquesne University School of Law. Frederick W. Thieman, a partner at Thieman & Kaufman, is a former U.S. attorney for the Western District of Pennsylvania.**

It is no secret what events precipitated this assault on Judge Smith's nomination. For the past six years, during the Clinton administration, Republican Sen. Rick Santorum blocked every Democratic nominee to the federal court, based upon blatant, hardball political tactics that harmed our region. Now Democrats are prepared to give it back to the Republicans in spades.

We sympathize with the frustration of Democratic interest groups. We also agree that it is crucial to challenge any White House nominee who is not suited -- by virtue of temperament or extreme judicial philosophy -- to hold these influential federal appointments. But Judge D. Brooks Smith is not an extremist, by any stretch of that term. He received the highest rating (unanimously) from the American Bar Association and the top rating from the Allegheny County Bar Association. Since his appointment by President Reagan in 1988, Judge Smith has earned the universal respect of judges and lawyers in Western Pennsylvania, regardless of party affiliation.

Stacked up against one negative letter written by the Washington coalition, over a hundred letters have been written to the Judiciary Committee in support of Judge Smith's nomination by notable Western Pennsylvania lawyers, judges, public officials and organizations.

These include letters from six former U.S. attorneys (under Democratic and Republican presidents); numerous members of Congress of both parties; all 10 of Judge Smith's colleagues on the federal district court, seven of whom were appointed by Democratic presidents; the president of the Pennsylvania Bar Association; the deans of Duquesne and Pitt law schools; the Women's Bar Association; a former president of the local ACLU; dozens of members of the criminal defense bar; and judges from the Supreme Court Superior Court of Pennsylvania (both Democrats and Republicans).

Federal judges, unlike elected political officials, cannot respond when attacked in the arena of public opinion. Their positions bind them to silence. Their reputations are the only currency that they bring to the bench in resolving society's most difficult conflicts.

If the Democrats in Washington wish to take aim at objectionable candidates, this is the wrong target. Moreover, the charges leveled against Judge Smith by the Community Rights Counsel are misinformed at best:

■ They assert that Judge Smith took "trips paid for by companies and interest groups," a claim that is overblown. The Judicial Conference of the United States has permitted the types of trips cited by the Community Rights Counsel, for the purposes of continuing education, so long as the judge determines there is no actual or potential conflict with pending cases. Most federal judges in the United States -- both Democrats and Republicans -- attend such seminars. Although there has

been a recent movement to introduce legislation to limit such trips, it is still the subject of honest debate.

■ They state that Judge Smith accepted a plea bargain in U.S. vs. Action Mining that was "too low." This is unsupportable. Judge Smith's fine of \$50,000, after this small mining company had already been slapped with \$625,000 in civil penalties, was considered within the normal range. Then-U.S. Attorney Harry Litman, whose office prosecuted the case, viewed Judge Smith's sentence as fair, reasonable and a victory for the U.S. government.

■ They assert that Judge Smith spoke out against the Violence Against Women's Act, in 1994, which is true. Most of the federal judiciary in the United States, and many state judges, opposed this law. It shifted sensitive abuse cases from the state courts (which were arguably better equipped to handle such matters) to the federal judiciary (which was already overtaxed). Although many of us supported the Violence Against Women's Act, others thought there were better ways to accomplish its important policy goals.

As a lawyer, prosecutor and state judge, Judge Smith handled countless abuse cases involving female victims. It is unfair to oppose a nominee for expressing sincere views as to how best handle this sensitive body of cases.

■ ■ ■

Not a single judge or lawyer who has dealt with Judge Smith during his 14 years on the federal bench, to our knowledge, has seriously questioned his fairness, impartiality or absolute competence. Writing to Sen. Patrick Leahy, Amy J. Greer, president of the Allegheny County Bar Association, indicated the local bar association's "full support" for Judge Smith's nomination to the appellate bench.

The public interest demands that a first-rate federal appeals judge be appointed to fill a crucial vacancy on our court. Members of our bar have a tradition of respect for judges, of any political affiliation, who earn it. Judge Smith will be a credit to all lawyers, judges and citizens of Western Pennsylvania. That, rather than settling political scores, should be the guiding polestar.

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OPINION

2/29/02

## The Tribune-Democrat

Founded in 1883

*"It is the organ of no faction or clique, and will aim to be, in truth, a tribune of the people, standing up for Johnstown always."*

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## Give Smith his due

### Judge under political attack

**U**S. District Judge D. Brooks Smith's nomination to the U.S. Court of Appeals hasn't exactly been a satisfying step in his legal career.

Based on Smith's record and the admiration and respect he has earned from his peers, his nomination to the appellate court should have been a walk in the park. He is chief judge in the Western District Court of Pennsylvania, having been a judge in the federal court in Johnstown and on the Court of Common Pleas in Blair County. He has been admired and recognized for his efficiency, fairness and intellect. He appeared to be the perfect candidate for promotion to the higher court.

But, nomination of the 50-year-old Smith was initially stalled in a political quagmire between Democratic U.S. Sen. Patrick J. Leahy, chairman of the Senate Judiciary Committee, and the Bush administration. Leahy refused to hold confirmation hearings on any of the president's recommendations to federal court. Efforts to move the nomi-



Smith

nation through the politics and into reality have been frustrating and painfully slow.

In hindsight, maybe the nomination would have been better left stalled. Now, with a confirmation hearing scheduled for Tuesday, a public interest law firm has stirred up all kinds of allegations against Smith, turning the nomination

into a growing political controversy.

First there were allegations that Smith was unfair in some of his rulings involving minorities and especially women. Supporters, including many minority members of various bar associations, denounced the allegations as unfair and unsubstantiated.

Now, more-serious charges about conflict of interest have been raised. Doug Kendall, executive director of the Community Rights Counsel, a public interest law firm in Washington, contends that Smith should have excused himself in the controversial John Gardner Black investment scam because Smith's wife worked at one of the banks in question.

It sure sounds like a mess, but other judges contend Smith exercised extreme caution in that complicated case, and did recuse himself when it became obvious that the bank where his wife worked would become a party in the fraud case.

Smith, of Hollidaysburg, is not permitted to comment in his own defense during the nomination process. However, the Cambria County Bar Association has ratified its unanimous support of Smith's nomination and the American Bar Association has given him its highest recommendation for an appointment to the appellate court.

On Tuesday, Smith will be permitted to answer these allegations at his confirmation hearing. He is probably due for a real grilling. But we have no doubt that he will be able to adequately answer the allegations and put the matter of his qualifications quickly to rest.

It's unfortunate that a jurist as talented and intelligent as Smith might be derailed by an overzealous public interest group. This is not the nominee to attack. Smith is the nominee to appoint.



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To the Honorable Patrick Leahy  
Chairman of the Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate, Washington, D.C. 20510

Dear Senator Leahy:

I am writing to you to express my support for a man that I consider to be one of the fairest and most honorable men I have ever known in my lifetime. He is the Honorable Judge D. Brooks Smith, a federal judge from the United States District Court of the Western Pennsylvania District. Judge Smith has served in this position with exceptional distinction, and he has dealt with working men and women in a very fair and equitable fashion in our general area of Western Pennsylvania. The reason I would know this is that I am a Labor Council President from Western Pennsylvania specifically Blair and Bedford Counties, and I myself am a lifelong Democrat and work very hard to elect Democrats wherever and whenever possible. I can assure you that Judge Smith has dealt with every case concerning Labor people without prejudice and with no regard to any one persons registration or political feelings. Our Labor Council felt so strongly about Judge Smith that three years ago we named him our Person of The Year at our annual Banquet that we put on to honor an outstanding citizen from the area.

Senator Leahy, if this man were not fair to everyone that has come in front of him, I can assure you that I would not be writing to you to urge you to confirm this very Honorable man to a seat on the Court of Appeals for the Third Circuit Court. I know that your committee has the power to forward this name on for recommendation to the full Senate and I would urge you to do so, with my assurance that this man is an excellent choice and would serve the United States of America with Honor and Distinction.

In Solidarity:  
Robert K. Kutz Jr.   
President of the Blair Bedford Central  
Labor Council AFL-CIO CLC

## From the ACBA

## PRESIDENT'S MESSAGE

## All Together Now (For a Change)



Amy J. Greer

One thing the ACBA President does quickly is that being ACBA President is not about the President of the ACBA. Many, many times during my term, I have felt what feels like the collective weight of every ACBA member on my shoulders as I prepare to do or say something on your behalf.

Primarily for me, I get a lot of feedback from you—and I listen to what you say. I encourage your comments either in formulating my reactions to something I have said, I say "fortunately," because you might guess, dealing with lawyers is complicated. Your comments, whether supportive or critical, and whether about the job I am doing or about the issues that affect us all as lawyers and as people, offer more guidance than you now. Keep in mind that part of my job as ACBA President is to speak for the members of the ACBA and for the ACBA as an institution.

Sometimes, the organization speaks through the Board of Governors and I

serve only as a conduit. However, in responding to everyday media inquiries or questions from community political leaders, they've learned that I'm the president of the bar association, I am acutely aware that I am representing on your behalf. Thus far, I have commented in waters of some controversy and may even have created some controversy of my own. All in all, I consider myself lucky that throughout what has been a somewhat eventful term, from what you have told me, I seem to be discharging my responsibility to speak for at least the vast majority of you.

All of this is a long way of introducing the fact that by the time you read this President's message, I will have had the opportunity to attend a Senate Judiciary Committee Hearing on the nomination of our own Chief Judge, Brooks Smith to the United States Court of Appeals for the Third Circuit. As I write this, I leave tomorrow for a day in Washington, D.C.—a day in which I have no idea what is going to occur. It could be worse though. I could be Judge Smith. The past couple of weeks have been very hard on him and the lawyers of Allegheny County seem to be very angry about that. And I'm one of them.

Recently, some organized effort has been made to impugn Judge Smith's reputation by people who don't seem to be far away from the committee where the effects of the judge's work have been most felt. How his "constructive," if you can call it that, feels about its Chief Judge is plain. The Judiciary Committee of this bar association has recommended Judge Smith "highly recommended" for a seat on the Third Circuit and the ACBA Board of Governors has written to the Senate Judiciary Committee members in support of his nomination. Similarly, the Pennsylvania Bar Association gave Judge Smith its highest rating. People here in West-ern Pennsylvania seem to hold this man in the highest regard. Lawyers here in West-ern Pennsylvania don't exactly believe him to be a fair, honest, and hard-working jurist. He has been a friend to the legal community in all of its factions and incarnations. I am proud to say that he is my friend.

Now, having said he is my friend, that is where the weight of the membership begins to feel heavy. When these most recent attacks on Judge Smith's character were first launched, if I were not the president of the bar association, I would have

simply assumed that they were false because he is my friend. However, the ACBA President cannot make such assumptions, particularly since she is likely to be asked to speak on the committee about the allegations. So in regard to the claims related to Judge Smith's work as trial judge in the John Gardner Black case, I did my homework. I spoke (in some cases several times) to people who actually were involved in the case. I reviewed the not insubstantial docket (in the month or so that Judge Smith was assigned the civil case, there were 90 docket entries); and I read some of the opinions that were generated, both in our court and by the Third Circuit. I concluded that the allegations asserted in the media were false. A review of the docket sheet alone disproved many of them.

I also found that people wanted to talk about this. I found that people were angry about what was being said about Judge Smith. I found that people called me to ask what could or should be done. I found that people asked me to participate in forming various responses on behalf of the judge. I found that people called me just to talk about it.

Continued on page 15



**PRESIDENT continued from page 4**

I was most surprised, somewhat disturbed, and genuinely intrigued, however, at the ease with which people who did not call me in that way, which usually inquires of me that I never called me. As much as I would like to say that I was surprised by this complete lack of contact from the press, by the time I got finished talking with all of the other people, I understood completely. The attack on Judge Smith was not personal—although it affected him all too personally—it was completely political.

Not since the initial flurry around his nomination have I been contacted, either directly or through the bar association, by any of those who purport to be "investigating" Judge Smith's record. The stories printed in our local papers about our local court are stories that originate from Washington, not from Pittsburgh. Believe me, in any other circumstance, I'd be fielding calls (or, at least, demanding whether I wanted to field calls) from reporters.

Judge Smith just got caught in the political crossfire that has scarred this U.S. District Court for too long. People who live far away and who purport to represent us (either directly or indirectly) have, for the sake of political expediency or personal preference, harmed our court, and the administration of justice within it, by their failure to effect the nomination and confirmation of judges to sit in open seats on this bench that have been vacant for so long that they've

almost gone cold. Commissioners sit. Potential candidates are recommended. People are even nominated, their lives and careers "on hold" while the politicians politic. Nothing more happens.

No matter your personal view on any particular candidate recommended for nomination, no matter your personal view on any particular candidate actually nominated, these people deserve the process to move forward. Nominees should be selected from the candidates and nominees who have been recommended for nomination should be voted on based upon their qualifications and their records. To know more about those qualifications, the people who should be asked are the people who actually know the nominees. For political reasons, the bar association has not invited judges to discuss the far from this judicial district. The same balancing Committee should hear from and about these nominees and make a decision on their nominations. We've all heard it and maybe even said it a thousand times at this point: up or down, just give them a hearing. This inexcusable waiting for nothing to happen will, no doubt, result in a judicial emergency in our court—and soon—while, at the same time, eventually limiting the field of interested and qualified people who must consider the potential for professional suicide that can accompany the interminable wait.

The attacks on Judge Smith and the vacancy problem here in the Western District are not unrelated. That's one of the great advantages of being president of the bar association: people tell you things. I'm thankful for that. Knowing the background and the "behind-the-scenes" intrigue helps me to have a sense of what is really going on and to respond to you when you contact me. Knowing what is going to come next also helps me to do a better job going forward. Both Republicans and Democrats have told me in the past that they're not interested in politics.

Now we're all ready for here in Pittsburgh. We'll complain about the lack of

judges and the effects of the attacks on the bench, but about the burgeoning court workload and the effect on the timeliness of decisions. We'll complain as nominees for open positions on the court wait for their turn to be heard. We'll complain that we'll be hearing the political battles to those who live or die by them. But when these political battles start to inflict personal injuries on a man who has been almost uniformly lauded for his work on the bench and in the community, we get angry.

During these past couple of difficult weeks, I have been listening to all of you. I have heard many of you, in many contexts and in many circumstances, some of which have been completely unrelated to matters legal or political, lash out in anger at these attacks on Judge Smith. In truth, since dealing with lawyers' IS complicated, I have been amazed at the uniformity of response and at the breadth of support for our Chief Judge.

So, when I was asked to attend the Senate Judiciary Committee hearing, although my first instinct was to agree to go, I did need to give it some thought. I felt the weight of you all. I was mindful of all the bar presidents who had come before me. I was concerned about setting a precedent for all of those who would follow since my hope is that other nominees to the Western District Court actually will get a hearing.

In the end, though, and after discussion with at least one of those who will follow me in this position, I concluded that I needed to act on what I had heard during the last couple of weeks. All of you who made the effort to seek me out to express your outrage, all of you who interrupted your own sentences about completely different subjects to ask "can you believe what they're doing to Brooks Smith?", all of you who have felt the need to talk to one another about the subject, within my earshot, with disbelief and disgust, I decided that I needed to go to the hearings not just because I wanted to go, but because the Allegheny County Bar needed to be heard on the subject and my presence there would make you heard.

It is a very rare person, indeed, who will garner the absolute respect and downright affection that Chief Judge D. Brooks Smith has engendered in this legal community. My hope is that such a person will never find him or herself ignited by cynical political operatives who are unconcerned by the truth, seemingly panicked by the possibility of a local appraisal of the judges who stand to their unforgotten assault. But I would not wish such an unfortunate event again come to pass. I know that another ACBA President will step forward to make sure you are heard. ■

# U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693

VERMONT

**Statement of Senator Patrick Leahy,  
Chairman, Judiciary Committee  
Hearing on Judicial Nominations  
February 26, 2002**

I thank Senator Feingold for chairing this important hearing on judicial nominations.

The Judiciary Committee has continued to hold regular judicial nominations hearings throughout this session, as we have since the shift in majority last summer. We held the first January confirmation hearing in seven years on the second day of this session. Today the Judiciary Committee holds its second February judicial confirmation hearing. In 1997, 1999 and 2001, the Republican majority held no confirmation hearings in either January or February. Today's hearing is the fourteenth hearing involving judicial nominations since the change in majority last summer. That is more hearings within the last seven months than the Republican majority ever held in any calendar year in which it was recently in the majority.

Today's hearing follows the tradition of including a Court of Appeals nominee as well as a number of District Court nominees. Unfortunately, because the White House has been slow to send nominations to the many vacancies in the federal District Courts, the federal trial courts across the country, today's hearing includes a fewer number of District Court nominees than the Committee was willing to consider. Indeed, the Committee is virtually out of District Court nominees to include at such confirmation hearings. After today, 35 of the 36 District Court nominees with ABA peer reviews will have participated in hearings. We are in the process of scheduling a hearing on the most controversial District Court nominee currently pending.

Of course more than two-thirds of the federal court vacancies continue to be on the District Courts and 35 are still without a nominee. The Administration has acted very slowly in making nominations to the vacancies on the federal trial courts. In the last five months of last year, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President.

Last year the President did not make nominations to almost 80 percent of the trial court vacancies that existed at the beginning of this year. As we began this session, 55 out of 69 District Court vacancies were without a nominee. Finally, in late January the White House sent up names for some of those trial court vacancies. Unfortunately, none have completed the paperwork needed to be included in hearings and none has yet received an ABA peer review.

Because the White House last year unilaterally changed the practice of nine Republican and Democratic Presidents and will no longer allow the ABA to begin its peer reviews during the selection process, ABA peer reviews on these new nominations are not likely to become available for some time to come. In the interim, we have already reached the point where the lack of available nominations for District Courts vacancies is holding back the number of judicial nominees the Judiciary Committee and the Senate could be considering. We experienced the same problem when the majority shifted last summer and we did not have enough District Court nominations ready for hearings in July through September last year.

After the Committee receives the indication that a judicial nominee has the support of his or her home state Senators and after the Committee has received ABA peer reviews, the nomination will then be eligible to be considered for inclusion in Committee hearings. Because the White House shifted the time at which the ABA does its evaluation of nominees to the post-nomination period, this year's nominees are unlikely to have completed files ready for evaluation until after the Easter recess. Of course, even then, over two and one-half dozen of the current federal trial court vacancies, 35, may still be without nominees.

To make real progress will take the cooperation of the White House. That is what I have been urging since the shift in majority. That is what I, again, called for when I spoke to the Senate on January 25, 2001. That cooperation is still not forthcoming.

We will make the most progress, most quickly if the White House would begin working with home state Senators to identify fair-minded, nonideological, consensus nominees to fill these court vacancies. One of the reasons that the Committee was able to work as quickly as it did and Senate was able to confirm 39 judges, as it has in the last seven months, was because those nominations were strongly supported as consensus nominees by people from across the political and legal spectrums.

I have heard of too many situations in too many states involving too many reasonable and moderate home state Senators in which the White House has demonstrated no willingness to work with home state Senators to fill judicial vacancies cooperatively. As we move forward, I have urged the White House to show greater inclusiveness and flexibility and to help make this a truly bipartisan enterprise. Logjams exist in a number of settings. To make real progress, repair the damage that has been done over previous years, and build bridges toward a more cooperative process, there is much that the White House could do to work more cooperatively with all home state Senators, including Democratic Senators.

In addition, as I have noted, the White House could help speed the Committee process if it would restore the ABA peer review participation to an earlier stage in the process. For more than 50 years the ABA was able to conduct its peer reviews simultaneously with the FBI background check procedures. This meant that when nominations were sent to the Senate, the FBI report and informal ABA peer review were completed and followed very quickly. Together with the

endorsement of the nominee's home state Senators, the basic requirements of the nominations file were available to be reviewed by the Committee much more quickly than they are now. This process allowed hearings to be scheduled soon after nominations were received in many instances. One of the consequences of the White House's unilateral decision last year to discontinue this longstanding bipartisan practice is that nominations are now not available to be considered or scheduled for hearings until many weeks have passed and these basic background materials can be assembled and submitted to the Committee. That is unfortunate and unnecessary.

There were occasions last year when we proceeded with hearings including fewer District Court nominees than I would have liked because recent nominees' files were not yet complete. I noted in my statement to begin this year that I feared that same circumstance being repeated this year. It already is. That is regrettable.

I have urged the White House to rethink its recent changes in traditional practices that were initially instituted by President Eisenhower and worked well for Presidents Kennedy, Johnson, Nixon, Ford, Carter, Reagan, (George Herbert Walker) Bush and Clinton. I suggest that the White House reconsider the delays caused by the abandonment of the traditional practice and that this Administration consider returning to the tried and true practice of sharing information with the ABA earlier in the process so that it can begin and complete its peer reviews by the time the nomination is made to the Senate.

Just as no Senator is bound by the recommendations of the ABA, so, too, the White House can make clear that it is reinstituting the traditional practice not because it intends to be bound by the results of that peer review or even take it into account, but solely to remove an element of delay that its actions introduced into the confirmation process. The White House can expressly ask the ABA not even to send the results of its peer review to the Executive Office, but only transmit them to the Committee, if it chooses. Whether or not the White House considers the ABA peer reviews, they are considered by many Senators. For example, a number of Republican Senators cited favorable peer reviews for judicial nominations as an indication that they merit the Senate's support. On the other hand, the fact that they are advisory and not binding on Senators is seen from the recent action confirming a nominee who received a "not qualified" rating from the ABA and the many nominees of this Administration who have been confirmed with mixed ratings.

As Chairman, I have sought to work with all Senators. In scheduling hearings for nominations, chairmen traditionally consider a number of factors, including the consensus of support for the nominee, the needs of the court to which the person is nominated, and the interests of the home state Senators. We have a number of nominees for whom individual Senators have expressed personal interest. I will continue to take that into account and seek to accommodate Senators in as orderly a process as possible.

Judicial nominations have never been scheduled for hearings based solely on the date of their nomination. Certainly there was no first-in-first-out rule during the six and one-half years that

preceded my chairmanship, when it could take years to get a hearing and more than 50 judicial nominees never received a nominations hearing at all.

I hope to integrate a number of nominations received before I became Chairman into hearings throughout this session. I anticipate that not all those nominations will be regarded as consensus candidates. We can anticipate that the more controversial nominations will occasion more review and more Senators raising questions that concern them during the course of our hearings.

In our first full week in session we proceeded with a hearing on the nomination of Judge Charles Pickering to the 5<sup>th</sup> Circuit. Senator Lott is very supportive of this nomination and even though his was not among the first sent to the Senate by President Bush last spring, we have tried to move forward to consideration of the nomination in recognition of the strong interest of the Republican leader.

Similarly, I knew of Senator Specter's strong interest in the Committee scheduling a hearing as soon as possible on the nomination of Judge D. Brooks Smith to a vacancy on the 3<sup>rd</sup> Circuit. Judge Smith was not nominated until September 10 and the Committee did not receive his peer review from the ABA until October 31, 2001. Although there were 44 judicial nominees nominated before Judge Smith, of which several remain pending, I have sought to accommodate Senator Specter by including Judge Smith in our hearing today. Of course, the previous nominee for this vacancy was Judge Robert Cindrich, also a District Judge in the Western District of Pennsylvania. Although he was nominated in February 2000, received a well qualified peer review rating by the ABA and was pending for more than 10 months, he was never included in a confirmation hearing. His nomination was returned to the President without any action having been taken by the Senate.

Likewise, other Senators, Republicans and Democrats, have asked me to give priority to various nominees. Senator Enzi requested attention to the nomination of Terrence O'Brien to the 10<sup>th</sup> Circuit, for example, and I will be trying to accommodate him, as well. I tried to take those requests into account in the last seven months and expect to continue to do so. Such interest was a factor in the scheduling of hearings for Judge Prost to the Federal Circuit, Judge Gregory to the 4<sup>th</sup> Circuit, Judge Clement to the 5<sup>th</sup> Circuit, Judge Riley to the 8<sup>th</sup> Circuit, Judge Harris to the 10<sup>th</sup> Circuit and Judge Melloy to the 8<sup>th</sup> Circuit. It was considered in the cases of Judge Mills in Mississippi, Judge Wooten in South Carolina, Judge Robinson in Kansas, the four judges the Senate confirmed last year for Oklahoma, the three judges the Senate confirmed for Kentucky, the two judges the Senate confirmed for Montana, the two judges the Committee confirmed for Alabama, and in connection with many of the 44 judicial nominees on whom the Committee has been holding hearings in the last seven months.

I expect to continue to try to accommodate Senators from both sides of the aisle in this regard. In so doing, I have tried to be forthright with Senators if a nominee has generated concerns. Not all of the judicial nominations scheduled for hearings have been without detractors, many are proving to be controversial.

A general impression, heightened by the White House's refusal to work cooperatively with some home state Democratic Senators in spite of precedent in that regard and its disdain for suggestions to proceed to assemble recommendations through bipartisan commissions as has been the tradition in many States, such as mine, is that the White House and some in the Senate are intent on an ideological takeover of the courts. With the Circuits so evenly split in so many places, nominees to the Courts of Appeals may have a significant impact on the development of the law for decades to come. Some of us are concerned that the Administration not orchestrate a roll back in the protections of individual rights, civil rights, consumer rights and privacy rights through its judicial nominations.

In addition to Judge Smith of Pennsylvania, this hearing includes another nominee to a District Court vacancy in Arizona, the third included in a hearing since the shift in majority last summer, another nominee for a District Court vacancy in Texas after the confirmation of Judge Martinez earlier this year, and a nominee for a vacancy in Alaska whose file was not completed until this year. I give my thanks to all Senators who have worked with the Committee to schedule this confirmation hearing and especially to Senator Feingold for chairing today.

**TIMOTHY K. LEWIS**  
Attorney at Law  
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January 30, 2002

Honorable Patrick Leahy  
United States Senator  
433 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

As a former judge on the United States Court of Appeals for the Third Circuit, I am honored to lend my voice to the chorus of bipartisan support for the prompt confirmation of D. Brooks Smith to the Third Circuit. If confirmed, Judge Smith would take the seat I vacated nearly two years ago. There is no one I could recommend more enthusiastically to carry on the tradition of Hastie, Higginbotham, Seitz and other outstanding judges of that court who, like the current Chief Judge, Ed Becker, devoted their lives to doing justice.

It is, I suppose, rare that a former judge is afforded the opportunity to comment upon the pending confirmation of his successor. But it is precisely for that reason that I felt your Committee might benefit from my observations concerning the outstanding qualities Judge Smith would bring to the Circuit, chief among these being an unrelenting intellect, an abiding instinct for fairness, and a sense of decency that knows no bounds. Indeed, those who know him well can testify that every manner and mannerism about him is unfeigned.

Judge Smith and I share a common background. Both of us served as state prosecutors early in our careers. Both of us were appointed to the federal bench in our early thirties. At the time of Judge Smith's appointment, I was an Assistant United States Attorney. I appeared before him many times as he began to become acclimated to the vagaries of federal law. But what separates a good judge from a potentially outstanding judge has little to do with a knowledge of the law, for that is expected. Character, depth of understanding, compassion and fairness are not taught in law school, and often these traits do not become well-forged even after a person has become vested with the responsibility of exercising judicial authority.

By the time I became Judge Smith's colleague on the district court in 1991, however, I had learned all I needed to know about his character, particularly his sensitivity to the nuances of race and disadvantage.

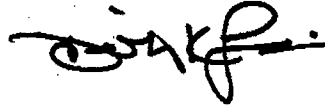
I was then a 35-year-old African-American lawyer whose only experience had been as a prosecutor when Senators Heinz and Spector, and later Senator Wofford, selected me for the district court. There were many whispers at that time that I was simply the unworthy benefactor of the politics of race; that I was an affirmative-action selection with thin credentials. We all must prove ourselves when we assume offices of great responsibility, but for persons of color, the insinuation that our only qualification is that we are black is different, and it carries the potential to inflict internal damage that can be masked, but sometimes not repaired.

Brooks Smith was the only one of my new colleagues to have the compassion to fully appreciate the impact of this issue upon me at the outset of my judicial career. He sat me down in his chambers one afternoon and, one by one, extinguished any and all reasons for questioning my readiness for the federal bench. He understood that so-called "affirmative action" transcends race and takes other forms, many simply not called affirmative action. He understood how to reach out to a colleague at an important moment. For me, no more need be said of this man's character.

One year later, I was elevated to the United States Court of Appeals. From that position, of course, I had the opportunity to observe Brooks from yet another perspective. As my former colleagues on that court would attest if they were able, Judge Smith is among the two or three most highly regarded district court judges throughout the circuit. His opinions are thorough and reflect a thoughtful analysis. More important, they provide the court of appeals with as complete an understanding of what happened in the district court as possible, something too few judges do. But most important of all, they are fair and balanced. This augurs well for the consensus building approach to judicial decision-making that awaits him. He is flexible, he is fair, and as his decisions in the area of prison reform make clear, he is willing to listen to those whose voices so many judges seem to have a hard time hearing.

In sum, you have before you an outstanding person. As a former judge, as a lawyer, and as a private citizen deeply interested in the quality of the federal judiciary, I can assure you that Brooks Smith is admirably suited by ability, by virtue, and by the sheer depth of his humanity — self-evident in his evolution as a judge but known well to those fortunate enough to have spent time with him — to receive your Committee's confirmation and to serve in this esteemed capacity. He is, quite simply, one of the finest men I've ever known. I strongly recommend that he be confirmed without delay.

Sincerely,







LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

March 1, 2002

The Honorable Arlen Specter  
United States Senate  
711 Hart Office Building  
Washington, DC 20510-3802

Dear Senator Specter,

I am responding to your letter of March 1, 2002 regarding financial disclosure reports filed by Judge D. Brooks Smith. You asked four questions. I will respond to them in order.

1. What information are judges required to report concerning legal education seminars where the expenses of their attendance are paid by a non-governmental entity?

The instructions for completing financial disclosure reports explain that a judge is required to report the identity of the source and a brief description (including location, dates, and nature of expenses provided) of reimbursements for travel related expenses received from any source aggregating \$260 or more in value. The requirement is based on section 102(a)(2)(B) of the Ethics in Government Act of 1978.

2. Do judges have to report the estimated monetary value of their trips?

No, the actual dollar amount of the reimbursements associated with travel is not required.

Honorable Arlen Specter  
Page 2

3. Has the rule been the same since 1988?

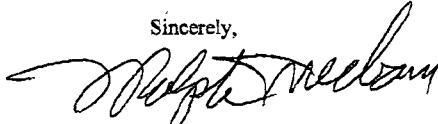
Yes, the filing instructions for reporting reimbursements have not changed.

4. Has Judge Smith been in compliance with the reporting requirements of the Administrative Office of the Court with respect to his attendance at various legal education seminars?

Yes, each year his financial disclosure report has been reviewed and certified as in compliance with law and regulation by the Judicial Conference of the United States Committee on Financial Disclosure in accordance with the provisions of section 105(b)(1) of the Ethics in Government Act of 1978.

Please advise if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Mecham", with a stylized flourish extending from the end.

Leonidas Ralph Mecham  
Director

## **Tyrone Area School District**

Office of the Superintendent  
701 Clay Avenue  
Tyrone, PA 16866  
(814) 684-0710 Ext. 123  
Fax: (814) 684-2678

February 23, 2002

The Honorable Patrick J. Leahy  
The Honorable Orrin G. Hatch  
Senate Judiciary Committee  
Dirksen Senate Office Building  
1<sup>st</sup> & Constitution Ave N.W.  
Washington, DC 20002

TO THE HONORABLE PATRICK J. LEAHY, THE HONORABLE ORRIN G. HATCH AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE:

I am writing this letter in response to the recent article by Doug Kendall, Executive Director of the Community Rights Counsel, questioning the legal and ethical standards of the Honorable D. Brooks Smith. I currently serve as the Superintendent of Schools of the Tyrone Area School District in Tyrone, Pennsylvania. In his article, Mr. Kendall attacks the Honorable D. Brooks Smith for various improprieties that Mr. Kendall alleges arose in the handling of the John Gardner Black municipal fraud case.

While the fraud case involved approximately fifty municipalities and school districts, the Tyrone Area School District stood to lose the largest and most significant amount of money. At the time, the Tyrone Area School District was in the process of building projects totaling over \$21 million dollars. In addition, the district's general operation funds and capital reserve funds were invested through John Gardner Black, resulting in a total investment of over \$26 million dollars. As the Tyrone Area School District had by far the most at stake in the case, I, as the Superintendent of Schools, was involved in all of the day to day occurrences and remained abreast of all developments. Outside of the attorneys and judicial officials directly involved in the case, I believe that I possess the most first hand knowledge of the role of the Honorable D. Brooks Smith.

In his article, it appears that Mr. Kendall questions the interim distribution of funds Order that was signed by the Honorable D. Brooks Smith. Both the Securities and Exchange Commission and the Trustee, Richard Thornburgh, recommended the entry of the Order at issue. Without this distribution, the Tyrone Area School District, as well as numerous other school districts, would have faced an extreme financial bind to meet payroll expenditures and/or building project costs. It was imperative for the school districts to receive the interim distribution. While Mr. Kendall makes light of the alleged "economic blackmail" of poor rural school districts, the fact is that without this Order the Tyrone Area School District would have faced extreme financial distress.

At no time, in my opinion, did the Honorable D. Brooks Smith commit any impropriety in his handling of the case. Furthermore, when the possibility of a conflict first arose, Judge Smith immediately recused himself from the case. As the Tyrone Area School District stood to lose over 1/7 of the total loss of \$71 million, I would have been extremely concerned of any impropriety and/or conflict of interest.

While closure in this matter took over three years, the Honorable D. Brooks Smith was only involved in the case for a period of thirty days. At no time during his brief involvement in the case did I ever question the ethics, integrity and judicial propriety of the Honorable D. Brooks Smith.

The Honorable Patrick J. Leahy  
The Honorable Orrin G. Hatch  
Senate Judiciary Committee  
Page 2  
February 23, 1992

Be further advised that I have provided a copy of this letter to Michael J. Betts, Esquire, of Betts Law Offices, Pittsburgh, PA, who represented the Tyrone Area School District in the Demos litigation, separate from the class action suit brought by Richard Hubert. Mr. Betts has authorized me to inform you that he is in complete agreement with the contents and sentiments I have expressed in this letter.

It is clear, in my opinion, the allegations by Doug Kendall are baseless and unwarranted. I urge the Senate Judiciary to confirm the nomination of the Honorable D. Brooks Smith to serve on the 3<sup>rd</sup> U.S. Circuit Court of Appeals.

Respectfully submitted,

*William N. Miller*

William N. Miller  
Superintendent of Schools  
Tyrone Area School District  
Tyrone, Pennsylvania

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Opinion

**Letters to the editor, 02/14/02**

Thursday, February 14, 2002

**Appeals court nominee has earned our support**

We are writing in response to the Feb. 9 article reporting that a group called the Feminist Majority is among a coalition that is "mounting a campaign against President Bush's nomination of Western Pennsylvania's Chief U.S. District Judge D. Brooks Smith to the 3rd U.S. Circuit Court of Appeals" ("[Appeals Court Nominee Targeted](#)"). We feel compelled to respond.

On behalf of the executive board of the Women's Bar Association of Western Pennsylvania, we support, without reservation, the nomination of the Honorable D. Brooks Smith to the 3rd Circuit Court of Appeals. Since his appointment to the U.S. District Court for the Western District of Pennsylvania, we have had the pleasure of appearing before Judge Smith as federal prosecutors, defense attorneys and sole practitioners, as well as members of large national law firms. He has always treated each of us and our clients, both individuals and corporations, with dignity and respect.

We have found Judge Smith to be a person of high integrity. He is exceptionally intelligent, thoughtful, hard-working and conscientious. When appearing before Judge Smith, you can be assured your case and issues will receive fair and thorough consideration. The public should be aware that the American Bar Association rated Judge Smith as well qualified for the 3rd Circuit Court of Appeals and the Allegheny County Bar Association gave Judge Smith its highest rating, highly recommended.

Judge Smith has consistently attended and supported events sponsored by the Women's Bar Association. This year, we asked him to speak at our annual Susan B. Anthony Award presentation, which is in honor of Mary Beth Buchanan, Western Pennsylvania's first appointed female U.S. attorney. Judge Smith was chosen to speak because of his contributions in creating a good working relationship between attorneys and the judiciary, and because of his commitment to eradicating gender bias in the court system.

Last year, our organization prepared and presented a report to the Supreme Court of Pennsylvania committee on racial and gender bias in the justice system. In interviewing attorneys to prepare the report, we did not receive a single complaint concerning Judge Smith. Based on our personal experience, as well as this study (through which a complaint could be made anonymously), any suggestion or insinuation that Judge Smith is sexist or gender-biased is simply not true.

**SHELLY R. PAGAC**

Co-President

**CYNTHIA REED EDDY**

Co-Chair of Judiciary Committee

Women's Bar Association of Western Pennsylvania  
Downtown**Weather**  
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**Headlines  
by E-mail**

**Kirkpatrick & Lockhart LLP**

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February 22, 2002

Mark A. Rush  
412.355.8333  
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mrush@kl.com

Honorable Patrick J. Leahy  
Chairman, Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Honorable Orrin G. Hatch  
Ranking Minority Member  
Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

Honorable Arlen Specter  
Senate Judiciary Committee  
433 Russell Senate Office Building  
United States Senate  
Washington, DC 20510

**RE: Chief U.S. District Judge D. Brooks Smith**

Dear Senators Leahy, Hatch and Specter:

I am writing to you to address erroneous news reports that have recently been published concerning Chief U.S. District Judge D. Brooks Smith from the Western District of Pennsylvania. It appears that the news articles have been spurred by, according to the Washington Post, "a liberal interest group who has alleged that Judge Smith acted improperly in a 1997 case filed by the SEC against John Gardner Black." The allegations attributed to this interest group are erroneous and, frankly, fanciful. Please permit me to clarify the record concerning Judge Smith's involvement in that matter as it is known to me.

On September 26, 1997, in SEC v. John G. Black, et al., CA No. 97-2257 (W.D. of PA), Judge Standish, in Judge Smith's absence, granted a request for a temporary restraining order freezing assets under the Defendants' (Black and two companies, Devon and FMS) control, and appointed former Attorney General Dick Thornburgh as Trustee ("Trustee"). The Trustee was appointed to, *inter alia*, preserve the status quo, manage the assets of the Defendants, investigate the extent of the losses, determine the proper ownership of the remaining assets, file reports with the court and bring any legal process necessary. Mr. Thornburgh retained this firm and Pricewaterhouse (now known as PricewaterhouseCoopers) to advise him. I was one of Mr. Thornburgh's counsel in this matter. What I will stress is what was

**Kirkpatrick & Lockhart LLP**

Senator Patrick J. Leahy  
 Senator Orrin G. Hatch  
 Senator Arlen Specter  
 February 22, 2002  
 Page 2

known to the Trustee and his counsel for the approximate thirty days in which Judge Smith was involved in the case. Most importantly, and what seems to have been lost in the reporting of this case, is what Judge Smith knew or was made aware of by the Trustee during this specific and defined period of time.

To summarize:

- No information concerning the investigation by the Trustee and Pricewaterhouse related to Mid-State Bank was communicated to Judge Smith before October 27, 1997.
- No information concerning Mid-State Bank being viewed as more than a depository of funds was communicated to Judge Smith by the Trustee before October 27, 1997.
- On October 27, 1997, four days prior to Judge Smith's *sua sponte* recusal, he was advised of only a developing but not confirmed suspicion by the Trustee that Mid-State Bank's role may be more than a depository.
- Judge Smith's release of fifty percent (50%) of the frozen funds on October 27, 1997 did not in any way benefit Mid-State Bank; to the contrary, only the school districts benefited. Equity demanded that the temporary restraining order otherwise be continued so the investigation could proceed to determine proper ownership of the remaining funds.

The initial thirty-day period (September 26, 1997 through October 27, 1997) was used to commence an investigation into the complex fraudulent scheme that Black had perpetrated. The initial investigation focused on identifying the victims of the fraud, determining the extent of the losses to each and determining whether there were any other knowing participants. In addition to the investigation, the thirty-day period was utilized to establish communication with all affected school districts, as well as to begin to account for and centrally locate all monies from numerous banks, including Mid-State Bank, and/or investments held by Devon and FMS. In fact, on October 24, 1997, all investment funds were removed from Mid-State Bank. As those and other efforts were underway, the Trustee charged us with determining whether some of the frozen assets could immediately be returned to the affected school districts, but in a manner that would be equitable to all affected. It was determined that fifty percent (50%) of the funds frozen could be returned. It was the Trustee's firmly held belief that the sooner the funds could be returned in an equitable and judicial way to the affected school districts, the better. No consideration was given to any effect these distributions may have on Mid-State Bank.

The joint motion of the SEC and Trustee to modify the temporary restraining order to permit an interim distribution of funds, with a proposed order, was filed on or about October 24, 1997. The thirty-day report of the Trustee was filed on or about October 27, 1997. A hearing was held by Judge Smith on October 27, 1997 concerning the proposed interim

**Kirkpatrick & Lockhart LLP**

Senator Patrick J. Leahy  
 Senator Orrin G. Hatch  
 Senator Arlen Specter  
 February 22, 2002  
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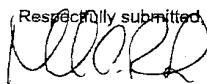
distribution of funds. Prior to the hearing on the proposed interim distribution of funds, an *in camera* conference was held with the Court, at which time the Trustee advised Judge Smith that information, although in its very early developmental phases, was being uncovered which may change Mid-State Bank's involvement in the case from that of merely a depository of funds. Around the same time period, Judge Smith informed the Trustee of his wife's employment in an unrelated division of Mid-State Bank. It is important to note that at this time Mid-State Bank was not a party to the proceeding. Judge Smith, while *in camera*, indicated an intention to consider recusing himself based on the potential for a future appearance of a conflict. Thereafter, on or about October 31, 1997, Judge Smith, *sua sponte*, recused himself.

It should be noted that Judge Smith was not briefed on a daily or weekly basis on the investigation or the forensic auditing being conducted by Pricewaterhouse during the initial thirty day time period of September 26, 1997 through the filing of the interim report on October 27, 1997. The only information available to him concerning the Trustee's efforts were the joint motion by the SEC and the Trustee to modify the temporary restraining order filed on October 24, 1997 and the thirty day report filed on October 27, 1997.

On October 27, 1997, and for that matter on October 31, 1997 when Judge Smith recused himself, it was not known what Mid-State Bank's eventual involvement would be determined to be. It is, therefore, clear that if the Trustee and the investigators who were charged in conducting the forensic audit and the investigation were unaware beyond a developing suspicion of the extent and nature of Mid-State Bank's involvement prior to October 31, 1997, Judge Smith certainly would not have that knowledge.

I do hope that this letter clarifies some of the factual inaccuracies that have been reported. I would add that I have practiced in front of Judge Smith as a federal prosecutor, as well as an attorney in private practice, and at all times have found him to display excellent judicial temperament and high integrity, and quite simply to be beyond reproach. Any allegations to the contrary concerning his judicial role on the Black case are without merit and foundation.

If you have additional questions or are in need of additional information, please do not hesitate to contact me.

Respectfully submitted,  
  
 Mark A. Rush

MAR/kac  
 cc: All Judicial Committee Senators





Services for Survivors of Sexual Assault & Domestic Violence

P.O. Box 170 Lewisburg, PA 17837

24-Hour Hotline: 800-850-7948

Office Phone: 570/523-1134

Fax: 570/524-9367

January 31, 2002

The Honorable Joseph Biden  
221 Russell Senate Office Building  
Washington D.C. 20510

Dear Senator Biden:

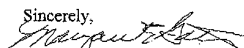
I am writing to support the candidacy of The Honorable D. Brooks Smith, Chief United States District Judge for the Western District of Pennsylvania, for the appointment to the United States Court of Appeals for the Third Circuit. Judge Smith is a personal acquaintance who shares a deep concern for the plight of battered women in Pennsylvania and in the United States. We have spoken on this issue and the problems faced by women in dealing with abuse. He has consistently lent his support to the various women's shelters in his region and has spoken on their behalf.

His record demonstrates a commitment to impartial and fair application of the law. The standard of fairness translates into consideration of the individual circumstances of women required to appear in District Court. His leadership in adopting a flexible policy for scheduling appearances enabled the court to be more family-friendly. As an undergraduate instructor in Constitutional Law and Civil Rights, I particularly appreciate the elevation of judicial fairness over administrative procedure.

The center at which I am Executive Director participates in three county STOP Violence Against Women Grants. We have seen amazing changes in the treatment of battered women and sexual assault victims by law enforcement, prosecution and the judiciary as a result of the federal emphasis through the VAWA Grants. These grants have enabled local centers to initiate cooperative efforts at the local level and to provide training that has translated into better enforcement and prosecution of state law at both the state and local levels. Judge Smith and I agree that the great benefit of the Violence Against Women Act Projects has been the strengthening of local support to combat domestic violence and sexual assault.

Thank you for your consideration of my recommendation for the appointment of Judge D. Brooks Smith to the United States Court of Appeals.

Sincerely,



Margaret E. Gates, Ph.D.  
Executive Director



"A United Way Agency"

"The official registration and financial information of Susquehanna Valley Women In Transition may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement. Susquehanna Valley Women In Transition is a 501 (c)(3) effective August 5, 1981."

Pittsburgh, PA  
Tuesday  
February 26, 2002

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## Perspectives: Setting the record straight on Judge D. Brooks Smith

Tuesday, February 26, 2002

By Dick Thornburgh



WASHINGTON - Today the Senate Judiciary Committee will consider President Bush's nomination of Chief U.S. District Judge D. Brooks Smith for the 3rd U.S. Circuit Court of Appeals, headquartered in Philadelphia.

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by E-mail

For 18 years, Judge Smith has served Pennsylvanians with distinction. Judge Smith boasts first-rate credentials in addition to his years of judicial experience, and the American Bar Association unanimously gave him its highest rating. Over 100 Democrats and Republicans alike have signed letters of support to the Senate Judiciary Committee. These letters from judges, public officials and leaders of civil liberties, labor, and women's organizations all praise Judge Smith's fairness and impartiality.

Dick Thornburgh, a former governor of Pennsylvania, served as U.S. attorney general under Presidents Ronald Reagan and George H.W. Bush.

The Post-Gazette has detailed the campaign against Judge Smith by the Community Rights Counsel and other extreme interest groups. Just as night follows day, it seems the usual suspects are lining up for another effort to "Bork" a distinguished judge. Specifically, critics argue that Judge Smith should have immediately recused himself from a 1997 municipal fraud case involving an investment adviser later convicted of defrauding several Pennsylvania school districts. Critics say recusal was necessary as Judge Smith's wife worked at Mid-State Bank, where some of the defendants' assets were deposited, and the Smiths held stock in Mid-State's parent company.

Please allow me to set the record straight. I served as the trustee for the defrauded schools and bore a fiduciary duty to safeguard their funds. And I can say with front-row, firsthand knowledge that Judge Smith acted with absolute integrity, independence and honor.

First, Mid-State Bank was not a party to the case, and nothing at the

outset suggested Mid-State was complicit in any fraudulent scheme. It was therefore unlikely that Judge Smith's wife, who worked in an unrelated part of the bank, would become a material witness. Since the complaint did not allege any wrongdoing by the bank holding the defendants' funds, any stock the Smiths owned in its parent company was immaterial. As trustee, I had sole possession of and control over the assets, and Judge Smith's initial order distributing 50 percent of frozen funds to defrauded school districts just approved an interim plan proposed jointly by me and the Securities and Exchange Commission while the case proceeded.

When Judge Smith later received information that Mid-State could, in the future, conceivably play a role in the litigation, out of an excess of caution he immediately recused himself sua sponte, without being asked by either party. The actions that Judge Smith took prior to his recusal in the civil case did nothing to limit Mid-State's eventual liability exposure or impact the victims' rights of recovery.

In fact, the attacks by interest groups ignore the fact that no funds were even deposited at Mid-State at the time Judge Smith granted his last orders. As trustee, I had transferred the assets to another bank several days before this order. Nothing that occurred between this order and Judge Smith's recusal days later benefited Mid-State. Judge Donetta Ambrose, who obtained the case after Judge Smith's recusal, agreed. She wrote to the Senate Judiciary Committee to say, "There was never any suggestion by me or the Court of Appeals that Judge Smith acted inappropriately or unethically. Rather, he acted prudently and cautiously. . . . The allegations of unethical conduct in the context of this case are without foundation."

Partisan critics also improperly fault Judge Smith for temporarily handling a later criminal case against the investment adviser. Nobody involved in the case has alleged that Judge Smith issued any improper orders or took any inappropriate action. The case was assigned to Judge Smith only after lawyers in the case agreed that it was unrelated to the SEC's civil case. Mid-State Bank was not a party. The U.S. attorney's office never sought recusal, and defense counsel did not seek recusal until four months later, when Judge Smith immediately recused himself.

As governor of Pennsylvania in 1984, I had the honor of originally nominating Brooks Smith to sit on the Court of Common Pleas in Blair County. In 1988, while attorney general of the United States, I had the honor of seeing the U.S. Senate unanimously confirm Brooks Smith as a federal judge. This year, I hope to see the same Senate set aside the recent attacks of extreme interest groups and honor Judge Smith's long record of judicial service with a swift and unanimous approval to the 3rd Circuit.

By any measure of judicial merit, Brooks Smith is qualified to serve. Like the president who nominated him, Brooks Smith has rallied a broad coalition of support. It would be wrong to allow extreme interest groups to delay his confirmation by even one day. However, I am optimistic that this will not occur. Judge Smith acquired his reputation for honesty, uprightness and professionalism the old-fashioned way -- he earned it. And it will see him through.



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The Washington Post

February 20, 2002, Wednesday, Final Edition

**SECTION:** A SECTION; Pg. A04

**LENGTH:** 1246 words

**HEADLINE:** Liberal Groups Question Nominee's Role in '97 Case; Appeals Court Choice Accused of Acting Improperly

**BYLINE:** Edward Walsh, Washington Post Staff Writer

**BODY:**

A judge who has been nominated by President Bush to a federal appeals court is coming under fire from liberal interest groups who say he acted improperly in a 1997 case involving a bank where his wife worked and in which they had a substantial financial interest.

D. Brooks Smith, now the chief judge of the U.S. District Court for Western Pennsylvania, was assigned to the case in late September 1997. In it, the Securities and Exchange Commission accused John Gardner Black, an investment adviser, of defrauding dozens of school districts and other local governments of millions of dollars entrusted to him.

On Oct. 31 of that year, Smith removed himself from the case, citing his wife's job as a vice president of an Altoona, Pa., bank where most of the missing funds were held in accounts Black controlled.

But by then, Smith had presided over the case for a month and had issued several orders, including one four days earlier that critics say could have benefited his wife's employer by partly shielding the bank from attempts by Black's victims to recover their losses. In his brief recusal order, Smith also failed to disclose an even larger potential conflict: He and his wife, Karen, jointly owned at least \$ 100,000 worth of stock in a holding company that owned the bank. The SEC's civil action against Black, which caused an uproar in western Pennsylvania, has resurfaced now as the Senate Judiciary Committee prepares to hold a confirmation hearing Tuesday on Smith's nomination to the 3rd U.S. Circuit Court of Appeals.

A Justice Department spokeswoman said earlier this month that Smith was not allowed to grant interviews, but that written questions could be submitted to him through the department. Yesterday, a senior Justice Department official, who asked not to be identified, said Smith "cannot respond to questions due to deference to the confirmation process."

The official said Smith removed himself from the case "out of an excess of caution" and that all of his actions were "proper."

Smith, 50, was appointed to federal district court in 1988 by President Ronald Reagan. The challenge to his handling of the Black case is part of a larger struggle over the shape of the federal judiciary. Earlier this month, a coalition of 27 liberal interest groups wrote a letter to the Senate Judiciary Committee contending that Smith's rulings as a district judge "show a disturbing pattern of bias in favor of powerful interests and disregard for the rights and needs of ordinary Americans."

The coalition urged the committee to scrutinize Smith's record closely before voting on his nomination.

The questions about Smith's handling of the case are being raised largely by Doug Kendall, executive director of the Community Rights Counsel, a public interest law firm that was one of the groups that sent the letter to the Judiciary Committee. In a memorandum he has circulated, Kendall argued that some of Smith's rulings "clearly advanced the interests of Mid-State Bank," the Altoona institution where his wife was a vice president and in which they had a financial interest.

Kendall cited a Smith order from Oct. 27 -- four days before the judge left the case -- that kept in place a freeze on some of the money that the school districts had turned over to Black to invest. The school districts wanted access to all of their money, but they were also divided into two camps.

One group had money invested in a pooled account at Mid-State, where about \$ 71 million appeared to be missing. The other group's money was held by other banks and apparently was safe. In court filings, the first group argued that their losses should be shared by all of Black's clients, including those that did not have money at Mid-State. The other school districts argued that they should not be entangled in the case at all.

Acting on a recommendation of the SEC and a court-appointed trustee, Smith on Oct. 27 lifted the freeze on half the money, provided that the school districts agreed not to challenge the continuing freeze on the other half.

According to Kendall, by maintaining the freeze on half of the funds that were not in the pooled account at Mid-State, "Judge Smith preserved a very large pot of money that could have dramatically reduced Mid-State's litigation exposure."

Mid-State Bank was not a defendant in the case and was not accused of wrongdoing by the SEC. The school districts were inconvenienced, but eventually gained access to all of their money when another judge lifted the freeze. In 1999, Keystone Financial Inc., a Harrisburg, Pa., holding company that owned the bank, settled lawsuits filed by more than four dozen school districts for \$ 51 million.

According to Smith's 1997 financial disclosure statement, he and his wife owned \$ 100,000 to \$ 250,000 in Keystone Financial stock. Karen Smith also owned \$ 15,000 or less in Keystone stock and had a 401 (k) plan at Mid-State Bank worth \$ 100,000 to \$ 250,000.

In an interview, Kendall said he was not accusing Smith of deliberately acting to protect those financial interests. "I'm not getting in his head and saying he's throwing this ruling to the bank, but I think it's unquestionable that this ruling was favorable to the bank," Kendall said. "Despite a very serious conflict, he ruled in a case, and he ruled in a way that benefited his financial interest."

Steven Lubet, a Northwestern University Law School professor, said Smith's decision to rule on the case

was "an inexplicable lapse, because the facts are clear and the law is clear and there isn't any question that [Smith] is disqualified, but he continued to sit on this case for 30 days."

Lubet said it did not matter that neither Smith nor the bank actually benefited from Smith's rulings. "The 'no harm, no foul' rule doesn't really have a place here," he said. "You expect judges to do the right thing. The disqualification rule is extremely important, because it's a crucial aspect of the legal system that judges should not have an interest in a case."

Smith's actions also appear to have put him at odds with standards set more than a decade ago by the 3rd Circuit, the appellate panel he hopes to join. According to Merri Jo Gillette, the lead SEC lawyer, at an Oct. 27 hearing before he partially lifted the freeze, Smith told the attorneys in the case about his wife's job at the bank and "pretty much told us it was his intention to recuse." But Smith stayed on the Black case for four more days and issued more rulings.

In a case involving another federal district judge, the 3rd Circuit ruled in 1988 that once a judge recognized a potential conflict, "he should recuse himself immediately" and not issue rulings other than "housekeeping orders."

Gillette, however, defended Smith. She said **it was not clear at the time what role** Mid-State Bank would play in the case. The court-appointed trustee, former attorney general and Pennsylvania governor Dick Thornburgh (R), said, "I never saw any evidence of him favoring the bank."

Stephen Gillers, professor of legal ethics at New York University Law School, said judges are required to tell the lawyers in a case of any potential conflict they have. "I can't say [Smith] certainly had to recuse himself," Gillers added. "I can say that a serious argument for recusal is present in these facts, so that Judge Smith should have revealed the information" before making any rulings.

**NOMINATION OF TERRENCE L. O'BRIEN, OF  
WYOMING, NOMINEE TO BE CIRCUIT JUDGE  
FOR THE TENTH CIRCUIT; LANCE AFRICK,  
OF LOUISIANA, NOMINEE TO THE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF  
LOUISIANA; PAUL CASSELL, OF UTAH,  
NOMINEE TO BE DISTRICT JUDGE FOR THE  
DISTRICT OF UTAH; AND LEGROME DAVIS,  
OF PENNSYLVANIA, TO BE DISTRICT JUDGE  
FOR THE EASTERN DISTRICT OF PENNSYL-  
VANIA**

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**TUESDAY, MARCH 19, 2002**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:05 a.m., in Room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, chairman of the committee, presiding.

Present: Senators Leahy, Kennedy, Durbin, Hatch, Specter, Kyl, and Sessions.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR  
FROM THE STATE OF VERMONT**

Chairman LEAHY. Good morning. I should note that because of a couple of conference committees going on, one in Agriculture, we are going to try to urge members—of course, everybody ought to feel free to speak as long as they want, but to keep the statements relatively briefly if we can, because I may well have to leave for that. If I do, I can assure you we will recess and try to get back, if not today then during this week. I am glad to see so many members here. We have Cajun bookends this morning, Senator Breaux and Mr. Tauzin.

Before everybody wonders what in the heck that is all about, we welcome you because we have nearly every region of our Nation here—the West, the Midwest, the Northeast, and the South. And I know a lot of the nominees' families have traveled with them. I see Senator Bennett and Senator Thomas, Senator Santorum—I know Senator Landrieu is on her way—Senator Enzi. I would point out to Terrence O'Brien, who has been nominated to the Court of Appeals for the Tenth Circuit, that I am glad he is here today be-

cause we have the situation—I couldn't walk on the floor of the Senate without Mike Enzi grabbing me, reminding me of my Irish half; for an earlier nominee, he kept reminding me of my Italian half. And, Mike, we have used up all our ethnics here. But as I told Senator Enzi earlier to remind me, we would get this on, and Senator Thomas, of course, so I appreciate that.

Lance Africk, who is the nominee to the U.S. District Court for the Eastern District of Louisiana; Paul Cassell, who is the nominee for the United States District Court for the District of Utah; and both Senator Bennett and Senator Hatch have urged me to put them on. Legrome Davis, who is the nominee to the U.S. District Court for the Eastern District of Pennsylvania. Actually, Judge Davis was first nominated to a vacancy on the District Court for the Eastern District of Pennsylvania on July 30, 1998. The Senate took no action on his nomination, and it was returned to the President. Then on January 26, 1999, President Clinton renominated him. The Senate again failed to hold a hearing for him, and his nomination was returned.

I know that Senator Specter worked very, very hard to have at least a hearing for him during the 868 days that he was before us and was unable to, so I congratulate Senator Specter in getting him renominated in January of this year. And we received his ABA peer review last week, and so I wanted to get him on as quickly as we can.

Because we may have to stop this during the middle of the morning, I will put my full statement in the record.

[The prepared statement of the Chairman follows:]

#### OPENING STATEMENT OF SENATOR PATRICK LEAHY

I would like to welcome the nominees to today's hearing. The nominees before us represent nearly every region of our great nation: West, Midwest, Northeast, and South. Many of the nominees' family members have made the long journey with them, and I extend the welcome of this Committee to the friends and families in attendance. Today, we are holding the confirmation hearing for Terrence O'Brien, nominee to the Court of Appeals for the Tenth Circuit; Lance Africk, nominee to the United States District Court for the Eastern District of Louisiana; Paul Cassell, nominee to the United States District Court for the District of Utah, and Legrome Davis, nominee to the United States District Court for the Eastern District of Pennsylvania.

I am particularly pleased to welcome Judge Davis to this hearing, because it has been a long time coming for this well-qualified and extremely patient nominee. Judge Davis was first nominated to a vacancy on the District Court for the Eastern District of Pennsylvania by President Clinton on July 30, 1998. The Senate took no action on his nomination and it was returned to the President on October 21, 1998. On January 26, 1999, President Clinton renominated Judge Davis for the position. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned to the President on December 15, 2000. I apologize to Judge Davis that in spite of my best efforts and those of Senator Specter, we were unable to have Judge Davis included in a hearing during those 29 months, those 868 days, between his initial nomination and the end of the last Administration.

I congratulate Senator Specter on the President's renomination of Judge Davis in January of this year. When we received his ABA peer review last week, I wanted to be sure to include Judge Davis in the earliest hearing possible in recognition of his extended wait from 1998 until today.

The Judiciary Committee has continued to hold regular judicial nominations hearings throughout this session, as we have since the shift in majority last summer. We held the first January confirmation hearing in seven years on the second day of this session. Today, the Judiciary Committee holds its 15th judicial confirmation hearing since the change in majority last summer and the fourth hearing for judicial nominees so far this year. We have held more hearings in fewer than nine months



than the Republican majority ever held in any year in which it was recently in the majority. This is no "illusion of movement;" it is real progress.

Today's hearing includes a Court of Appeals nominee, as well as a number of District Court nominees. Unfortunately, because the White House has been slow to send nominations to the many vacancies in the federal district courts, the federal trial courts across the country, today's hearing includes fewer District Court nominees than the Committee would have been willing to consider if paperwork for consensus nominees had been forwarded in a timely manner. I noted my concerns that ABA peer reviews might not be completed until after the Easter recess for the two dozen District Court nominations not sent to the Senate until January of this year and those fears have proven well-founded. Only three other district court nominees have been received ABA peer reviews and two of those were received less than a week ago. That leaves 21 district Court nominees awaiting ABA peer reviews as well as the nominee to the International Trade Court.

Unfortunately, the Administration has chosen not to act on my suggestion to accelerate the notice to the ABA of those being selected for nomination and several weeks were lost recently while the Administration objected to nominees cooperating with the ABA peer review process. Of course more than two-thirds of the federal court vacancies continue to be on the district courts and more than half of the district court vacancies, 35 to 63, are still without a nominee. The Administration has been slow to make nominations to the vacancies on the federal trial courts.

After today, 41 of the 44 district court nominees with ABA peer reviews and completed files will have participated in hearings. In the last five months of 2001, the Senate confirmed a higher percentage of the President's trial court nominees, 22 out of 36, than a Republican majority had allowed the Senate to confirm in the first session of either of the last two Congresses with a Democratic President.

In 2001, the President failed to make nominations to nearly 80 percent of the federal trial court vacancies. As we began the 2002 session, 55 out of 69 District court vacancies were without a nominee. In last January, the White House finally sent up names for some of those trial court vacancies. It has been fewer than two months since we received these nomination and we have already scheduled hearings for some of them, within days of receiving ABA peer reviews and blue slips from their home State Senators.

Last year, the White House unilaterally changed the 50 year-old practice of nine Republican and Democratic Presidents by no longer allowing the ABA to begin its peer reviews during the selection process. As a result, the ABA peer reviews for many of these nominations are not likely to become available for some time. We remain at the point where the lack of available nominations for district court vacancies is holding back the number of judicial nominees the Judiciary Committee and the Senate could be considering. We experienced the same problem when the majority shifted last summer and there were not enough district court nominations ready for hearings in July, August and September. That has proven to be a problem again at the beginning of this session since we completed work on so many of the nominations last year.

In order to make more progress, we need the cooperation of the White House, as I have been urging since the shift in majority. That is what I called for when I addressed the Senate on January 25, 2002. Yet, the requested cooperation has not been forthcoming from the White House or from the Republican Senate leadership. Instead, those on the other side of the aisle have unjustifiably attacked the Committee process and the Democratic members of the Judiciary Committee personally. They have obstructed unrelated nominations, legislation and oversight activities. That is most unfortunate.

We will make the most progress most quickly if the White House would begin working with home state Senators to identify more fair-minded, moderate, consensus nominees to fill the vacancies in the many federal courts. One of the reasons that the Committee has been able to work as quickly as it has and the senate has been able to confirm 42 judges in less than nine months, is because many of those nominations were supported by home state Senators and those across the political spectrum as qualified, consensus nominees.

I have heard of too many situations in too many states, involving many moderate home state Senators, in which the White House has demonstrated no willingness to work with these Senators to fill the judicial vacancies. As we move forward, I continue to urge that the White House show a greater spirit of inclusiveness and flexibility so that the nomination process becomes a truly bipartisan enterprise. Logjams exist in a number of settings. To repair the damage that has been done over previous years, and to build bridges with the Democratic majority, there is much the White House can do in terms of cooperation with all senators, including Democratic Senators.

Last year we achieved results that were five times greater than the White House Counsel had predicted. Since the change in majority, the Senate has proceeded to confirm more judges faster than during the preceding six and one-half years of Republican control. Already this year, in the short time that the Senate has been in session, we have confirmed 14 judges. In only three months, we have confirmed just a few less than were confirmed in the entire 1996 session, the second year of the Republican control. Rather than work with us, some seem intent on creating controversy and obstructing the process. That is a shame.

As Chairman, I have sought to work with all Senators. In scheduling nominations for hearings, the Chair traditionally considers a number of factors, including the consensus of support for the nominee, the needs of the court to which the person is nominated, and the interests of the home state Senators. We have a number of nominees about whom individual Senators have expressed personal interest. I will continue to take that into account and seek to accommodate Senators as much as possible.

Judicial nominees have never been scheduled for hearings based solely on the date of their nomination, contrary to recent claims and demands made by the Republican leadership. Certainly there was no "first-in, first-out" rule during the six and one-half years that preceded my chairmanship—a time when it could take years for nominees to get a hearing and more than 50 judicial nominees were never included in a nominations hearing at all.

I hope to integrate a number of nominations received before I became Chairman into hearings throughout this session. I anticipate that not all those nominations will be regarded as consensus candidates. We should expect and understand that the more controversial nominees will require greater review. This process of careful review is part of our democratic process. It is a critical part of the checks and balances of our system of government that does not give the power to make lifetime appointments to one person alone to remake the courts along narrow ideological lines.

The scorched-earth campaign in which unrelated nominations and bills and oversight responsibilities of this Committee are being obstructed by Republican objections since last Thursday stands in sharp contrast to the way the Senate acted in the immediate wake of the disappointing party-line vote rejected the nomination of Judge Ronnie White in 1999. As I recall, even in our disappointment after the floor vote on that nomination, I proceeded to vote for the confirmation of Judge Ted Stewart of Utah.

Despite the harsh statements of some since last Thursday, today we are holding a hearing on another nominee for the District of Utah, Paul Cassell, a law professor from the University of Utah College of Law. This nomination is not without controversy. I would hope that my continuing goodwill is not lost on others in the Senate.

Today I continue to try to accommodate Senators from both sides of the aisle. Indeed, the court of appeals nominees scheduled for hearings so far this year have been at the request of Senator Grassley, Senator Lott, Senator Specter and now Senator Enzi. I extend my thanks to all of the Senators who have worked with the Committee to schedule this confirmation hearing today.

Chairman LEAHY. I will yield to the Senator from Utah, who I hope will also help us move forward.

#### **STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Well, thank you, Mr. Chairman. I will put my statement in the record, too. I just want to welcome all of our colleagues here from both the House and the Senate. I also want to welcome all of those nominees and their families who are here. We have four excellent nominees here today. I think they should all go through this process, and as quickly as we can. Each of them will serve, I think, with distinction. Each of them has tremendous background and tremendous qualifications.

We are particularly pleased with Paul Cassell from Utah, who is a law professor at the University of Utah, was first in his class at Stanford, was editor of the Law Review there, and who has been a leading authority in so many areas. We are very pleased with him, and we hope that soon we will have Michael McConnell, who

has more bipartisan support than almost anybody I have seen come before this committee, from the left to the right, Democrats, Independents, Republicans. And I have been informed by the chairman that you will get him up pretty soon as well.

We are pleased with both of you, and, frankly, we are pleased with the other nominees who are here today, and I will put the rest of my statement in the record.

[The prepared statement of Senator Hatch follows:]

## STATEMENT OF SENATOR ORRIN G. HATCH

I am pleased that the Judiciary Committee is considering a few more nominations today. We have before us four exceedingly well-qualified candidates for the federal bench, and I would like to welcome all four of you to the Committee, and also welcome our distinguished witnesses who have come here to support you.

Our only circuit court nominee on the agenda is Terrance O'Brien, who has been nominated to the Tenth Circuit. Judge O'Brien comes to this nomination after a distinguished 20 years of public service as a state district judge in Wyoming. In that capacity, he has heard approximately 13,000 cases and has also managed to find time to serve on task forces and commissions to help develop the practices and laws of Wyoming in areas which are of great interest to me, including the use of drug courts, child support, judicial ethics, and split sentencing. He also supervised a complete rewriting of the criminal rules of procedure of Wyoming to make them more compatible with federal rules. No small achievement. Judge O'Brien has served the public in other ways, too—even before he reached the bench. He wore the uniform of the United States Army from 1966 to 1969, rising to the rank of Captain, and also served in the Justice Department as a staff attorney where he continued building his expertise in Land and Natural Resources Law.

Our three district court nominees are similarly outstanding.

Paul Cassell, our nominee for District of Utah, needs no introduction to most members of this Committee. If I may be excused for a little bit of home-state pride, I'd like to say that Professor Cassell is one of the most qualified people ever nominated to the District Court bench. He graduated from Stanford University Law School, where he was Order of the Coif and President of the *Stanford Law Review*. He served as a law clerk for then-Judge Antonin Scalia on the D.C. Circuit Court of Appeals, and then for Chief Justice Warren Burger on the Supreme Court. He has worked as an Assistant U.S. Attorney in the Eastern District of Virginia and as an Associate Deputy Attorney General at the Department of Justice. Presently, as a professor at the University of Utah College of Law, he enjoys not only a devoted following by adoring students, but also a national reputation for his scholarship which includes over 25 published law review articles. It is indeed a special pleasure to welcome Professor Cassell and his family here today, and to see him on his way to putting his considerable talents and energy to work for the District of Utah.

While I'm gloating over the excellence of Utah judicial nominees, I can't resist mentioning the other extraordinarily qualified Utahn pending before the Committee, Professor Michael McConnell. Professor McConnell may well be the most bipartisan nominee currently pending—his nomination has been applauded by legal scholars and lawyers from across the political spectrum, including Professors Laurence Tribe, Charles Fried, Cass Sunstein, Akhil Amar, Larry Lessig, Sanford Levinson, Douglas Laycock, and Dean John Sexton. Professor McConnell also enjoys the strong support of both of his home-state senators, and broad support among the bar and the academy in his home state of Utah. And he earned the ABA's highest possible rating, Unanimous Well Qualified. I look forward to welcoming *him* here soon, too.

Our other two district nominees today are no less deserving of gloating—even though they are not from Utah. Judge Lance Africk, our nominee for the Eastern District of Louisiana, has an impressive record in both the public and private sectors. Upon graduation from the University of North Carolina School of Law, Judge Africk clerked for the Louisiana Fourth Circuit Court of Appeal, then joined a New Orleans law firm. Soon after, he joined the Orleans Parish District Attorney's Office in New Orleans and became director of the Career Criminal Bureau, where he prosecuted criminal cases. After a brief stint in private practice, he became an Assistant U.S. Attorney in New Orleans and served as Chief of the Criminal Division until 1990. Since then, Judge Africk has served as U.S. Magistrate Judge for the Eastern District of Louisiana.

Last but not least, Judge Legrome Davis, our nominee for the Eastern District of Pennsylvania, earned his B.A. from Princeton and graduated from the Rutgers School of Law in Camden. For the past 15 years, he has been a Judge on the Pennsylvania Court of Common Pleas. During this period, Judge Davis has not only earned the great respect of judges, lawyers, and litigating parties alike, but has also labored as a tireless reformer of the structure and workings of the Philadelphia court system. He has made significant contributions to the law, and I know he will continue to do so in his new role as a federal district court judge.

I am obviously very impressed with the accomplishments and credentials of each of these four nominees, and I again welcome you all to the Committee. I look forward to this hearing, and to working with my Democratic colleagues to ensure your swift confirmation.

Chairman LEAHY. We will go, as we normally do, by order of seniority. The first person would be Senator Specter. I understand he is coming from another meeting, so we will go next to Senator Breaux.

**PRESENTATION OF LANCE AFRICK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA BY HON. JOHN B. BREAU, A U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator BREAU. Thank you very much, Mr. Chairman and members of the committee. I have a short 30-minute speech that I would like to give on behalf of Lance Africk. [Laughter.]

However, I will follow your lead—

Senator HATCH. We would like to hear that.

Senator BREAU. I bet you would.

Chairman LEAHY. French and English or Cajun and English?

Senator BREAU. Simultaneous translation by my other bookend over there.

Thank you very much. I am delighted. This is a great day for the Africk family. It is also a very good day for the people of this country, and particularly the people of the Eastern District in New Orleans where Judge Africk is going to be serving after his confirmation, hopefully, as the Federal District Judge for the Eastern District of New Orleans.

I think everybody that comes before the committee, if they have gotten this far, really has been carefully researched and their qualifications have been very closely looked at to determine their ability to serve. But, you know, we have to recognize that I would imagine a number of the nominees have to have a little bit of on-the-job training when they assume the robes and the gavel of the Federal district judgeship.

I think with Lance Africk this is not going to be needed, not going to be necessary. He is a person who is uniquely qualified to be elevated from a position of a Federal magistrate up to the position of a Federal district judge. He will hit the ground running. He has, in fact, served in the capacity of acting judge on a number of cases. As a Federal magistrate, he has been involved in all the things a Federal district judge is called upon to do.

In addition to that, I think it is very important to not that he has a very extensive legal background, having served in the United States Attorney's Office for the Eastern District where he gained a great deal of actual on-the-ground experience as chief of the Criminal Division for the U.S. Attorney's Office. So it is rare that you have a person with all the qualifications that he possesses in a nominee, from a prosecutor standpoint, from an acting magistrate standpoint. He is ready to go.

He has a wonderful family. His wife, Diane, and his two children are here. We are pleased to be with them, as well as his wonderful parents who are also here to see this very great day in their family's career.

There is bipartisan support from the Louisiana delegation, Republicans, Democrats. Senator Landrieu is on her way to express her support as well, and I strongly recommend his favorable consideration.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very, very much, Senator Breaux.

Senator BENNETT. I might mention that Senator Bennett and I had lunch, I think it was Friday, and again, the Senator was speaking strongly in favor of Mr. Cassell. Please go ahead, Senator Bennett.

**PRESENTATION OF PAUL CASSELL, HOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH BY HON. ROBERT BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator BENNETT. Thank you, Mr. Chairman. I usually don't have much to say with respect to judicial nominations because the senior colleague from my State has been chairman of this committee and now is ranking member of this committee, and he has the credentials to vet nominees here.

As I have said, I am unburdened with a legal education, and so I view these issues from the standpoint of a layman. But I do look forward to the opportunity to comment about Paul Cassell because I have heard so many good things about him from so many people whose judgment that I trust. Starting, of course, with Senator Hatch, but going on through the Utah legal community, I hear over and over again how qualified and intelligent Professor Cassell is.

I use the term "professor" because his current employment is as a professor at the University of Utah Law School, where he is recognized not only for his ability as a scholar, but for his ability as a teacher to make sense. All of us have had the experience of sitting in a classroom with brilliant scholars who required a translator. And Professor Cassell is clearly not one of those. He speaks clear English. He makes it clear where he stands. People understand what it is he is saying.

I think that is a very excellent qualification for a Federal judge, to be able to issue a ruling that is understandable, that is in clear language, and that the layman can understand.

So I join with a wide range of Utahns in saying to this committee, we hope you confirm Paul Cassell quickly, we hope you put him on the bench as soon as possible. We need him on the bench in Utah, and we look forward to a long and distinguished career there on his part.

So, with that, Mr. Chairman I will urge the committee to act and move on to my next assignment.

Chairman LEAHY. Senator Bennett, I appreciate that, and I know, like the others, you also have several different meetings going on at this time. But I appreciate you taking the time to come here.

Senator Thomas, always a delight to have you here. Go ahead.

**PRESENTATION OF TERENCE L. O'BRIEN, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING**

Senator THOMAS. Thank you, Mr. Chairman. I want to thank you and Senator Hatch for holding this meeting today. It is an honor for me to join in introducing Judge O'Brien. He is a person, of course, that we have known in Wyoming of highest character and integrity.

When a previous judge in the Tenth Circuit took senior status, I, along with Senator Enzi, put together a committee to take a look at qualified and seek out qualified candidates. Following that process, the committee selected three candidates who would be qualified to serve. We forwarded those to the White House, to President Bush, and we were very pleased when he formally nominated Judge O'Brien. And so I think he is an outstanding selection for Wyoming's seat on that court.

Judge O'Brien is a distinguished former State court judge with decades of legal service. He sat for 20 years in the district court for the Sixth District in Wyoming. He was appointed by merit selection in 1980 by Governor Ed Herschler, who, by the way, is a Democrat, has been retained by the voters every 6 years since that time.

He is experienced in Federal law, having served as an attorney for the Appellate Section of the Land and Natural Resource Division of the U.S. Department of Justice. He has argued and briefed several cases involving public lands, environmental issues before the Tenth Circuit. He has also practiced in the private sector. He is a native of Wyoming, legal affairs, served on the State Judiciary Supervisor Commission, Chair of the Wyoming Judicial Conference, the State's Criminal Rules Advisory Committee, and also very active in his local efforts to create a drug court.

So certainly, in our view, there is no one more qualified for this job. We do need to move forward to fill those vacancies, as you know, in the Tenth Circuit. So I will take no longer except that we wholeheartedly endorse and urge your support for Judge O'Brien.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

I might say, Senator Thomas, with Judge O'Brien, one of the things that has been very helpful to me is that you and Senator Enzi have been able to bring forward a nominee who has a great deal of consensus of support. He certainly would not be considered an ideologue of either the right of the left by any means, but a judge that has this strong, not only bipartisan support but substantive support, and I appreciate the efforts that both of you made to make sure there is that type of consensus nominee. So thank you very much for being here.

Senator THOMAS. Thank you, sir.

Chairman LEAHY. Senator Santorum.

**PRESENTATION OF LEGROME DAVIS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. RICK SANTORUM, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SANTORUM. Thank you, Mr. Chairman. We also have a nominee for the Third Circuit Court of Appeals, Judge Smith, who I think meets the exact criteria that you just articulated, and I look forward to his——

Chairman LEAHY. I believe he has his hearing, has he not?

Senator SANTORUM. I look forward to his vote here in the committee and the opportunity to have——

Chairman LEAHY. Are you here to speak for Judge Smith or the other nominee?

Senator SANTORUM. I will get to that in a second here.

The nominee that I am here to speak for today I am very excited about. He, as you mentioned, was nominated by President Clinton and, unfortunately, was a victim of, frankly, a squabble between the local political party in Philadelphia, Democratic Party in Philadelphia, and the President, President Clinton.

This is an outstanding nominee and someone who I have been very, very strongly supportive of for several years. And I can tell you the White House is a very enthusiastic supporter, even though he is a Democrat. He is someone who has distinguished himself greatly in both his work as a district attorney in Philadelphia, has been a common pleas court judge for 15 years in Philadelphia. The President, I can tell you—and I related this to Judge Davis—was very, very excited about his nomination and putting him back before the United States Senate. And I am hopeful, since he is the first of eight pending nominees for district court in Pennsylvania before this committee, that he will move quickly. He is most deserving.

Senator Specter and I have a panel that reviews nominees, and he scored the highest of anybody in our process. So he is most distinguished, most worthy, and hopefully he is the first of many of the district court nominees that will move through this committee this year.

Thank you, Mr. Chairman.

Chairman LEAHY. It is your understanding that somehow the political party in Pennsylvania decided that he wouldn't get a hearing during those hundreds and hundreds and hundreds of days here?

Senator SANTORUM. Mr. Chairman, if you would like to review that, I would be happy to—

Chairman LEAHY. Just based on what you just said, there was a dispute there, and as a result, he was unable to—I was not chairman at the time, but because those parties told the—

Senator SANTORUM. The administration—

Chairman LEAHY. Are you suggesting the party told the committee not to hold a hearing?

Senator SANTORUM. The administration and the leaders of the Democratic Party in Philadelphia did not have a meeting of the minds, unfortunately, with respect to several nominees in Pennsylvania.

Chairman LEAHY. So they stopped—

Senator SANTORUM. And as a result of that, with respect to Democrats, Senator Specter and I have always had the opinion that when the President and the Democrats cannot get along, then we sort of let that stand. We saw it with the local Democrats, and that is what we did in this case. And that is why we are very excited, with that friction now being broken, that Judge Smith can come forward on his own merits and be nominated by a Republican President and be confirmed.

Chairman LEAHY. So do you mean by that you supported not holding a hearing?

Senator SANTORUM. I think I have been very, very clear about that. I was very clear about it at the time, that there was that controversy, and it was very unfortunate. It was something that we tried to broker through, but it was unfortunate at the time that it



was not able to be worked out, as we try to accede, as we have in the past, with Democratic nominees and a Democratic President to the Democratic congressional delegation and the Democratic leaders of the party.

Chairman LEAHY. I am not sure I understand. You have to help me. I just come from a small town in Vermont.

Senator SANTORUM. I don't think I need to help you very much, Mr. Chairman. I think you understand it very well.

Chairman LEAHY. No, I don't.

Senator SANTORUM. I don't think you should be facetious in dealing with these—

Chairman LEAHY. Did you support not holding a hearing?

Senator SANTORUM. Mr. Chairman, I think the process was as I think I articulated, and I think I did say that when there is a situation where there is a controversy within my delegation, the Democrats in my delegation, in the Democratic Party, with the White House, that I will side with folks from my State.

Chairman LEAHY. Senator Enzi, again, I am delighted to have you here, and I do appreciate—and I want to emphasize this, I appreciate the work you have done to get your nominee before us, as you did with a previous nominee. And I want to say I appreciate that very, very much. You have done a service not only for Wyoming and the circuit and your nominee, but you have been extraordinarily helpful to this committee, and I do want you to know I appreciate that. Please go ahead, sir.

**PRESENTATION TERRENCE L. O'BRIEN, NOMINEE TO BE CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. MIKE ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING**

Senator ENZI. Thank you, Mr. Chairman. I want to thank you for holding this hearing today and for all the consideration that you have given me and how you have put up with my letters to bug you, as you suggested. I still have a couple of those left, but I guess I can throw them away.

Chairman LEAHY. No, it has been helpful, very, very much, and also the facts that you put in there have been extremely helpful to me. Thank you.

Senator ENZI. And hearing your earlier admonition, I would ask that my full statement be a part of the record and would like to highlight some of the personal information.

I have known Terry for 22 years. Actually, I knew him before that, but that is when he moved to Gillette, and I had the opportunity to work with him on a number of things. He came as a judge and worked just up the street from my shoe store, so I got to talk to people occasionally that had just been in his court. And I can tell you that he is a no-nonsense judge, he is fair, and that is recognized even by the people that have been before him and have lost, which is quite a criteria, I think, for a judge.

He made decisions that were based squarely on the law, the facts, and did careful consideration, and he always explained the reasons for what he was doing, and he was able to explain those clearly and concisely, and I think if you have looked at some of his decisions, you will find out that they were effective, professional,

and efficient. And they aren't full of legal jargon or unnecessary words. He does explain the law so people can understand it.

We have watched each other's kids grow up, but we have had a more personal relationship than that. Besides being in a number of organizations together, we specifically got together with the Italian friend that you helped me with earlier for regular dinners. And we had three different branches of government recognized at that point, and we would come up with a list of topics to discuss. One person would host dinner, one would provide the refreshments, and one would select the topics for the evening. And we solved the problems of the world. We had no idea that someday we might actually have a chance to solve some of the problems of the world. They were a delightful opportunity for discussion, but more so to find out more about each other and increase the bonds of friendship.

I can also tell you that my wife, Diana, served on one of Terry's juries, and she found the experience interesting and she liked the way that Terry handled the proceedings. And after she served on the jury, my children noticed that she started doing better cross-examining skills, too.

I know that the country will benefit from having Terry O'Brien as one of our circuit court judges, and, again, I thank you for your consideration of this and hope that we can put him through promptly so we can fill that gap.

Thank you, Mr. Chairman.

Chairman LEAHY. Tell your wife she is fortunate. I have presented hundreds of cases to juries, but I have never had a chance to sit on one, and I would have loved to. But thank you very much, Senator Enzi, and I know you have another commitment, and I appreciate you being here.

Senator ENZI. Thank you.

Chairman LEAHY. Congressman Tauzin, Chairman Tauzin, I do appreciate you coming over here. We talk about committees in conference. You have as busy a schedule as anybody on Capitol Hill, and it is an honor—all joking aside, it is an honor to have you here. You and I have been friends for decades, and I am delighted you are here. Go ahead, sir.

**PRESENTATION OF LANCE AFRICK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA BY HON. W.J. TAUZIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative TAUZIN. I want to thank you and Senator Hatch for inviting me to be here. Let me first tell you, Mr. Chairman, that I often say that I taught Senator John Breaux everything he knows—not everything I know, of course, but everything he knows. [Laughter.]

And this is the exception. This is the one exception. I came to know Lance Africk, our nominee, through his father, Jack Africk, who is here today. And I came to know Jack through John Breaux. In fact, Jack was working then with a project that Nick Buonoconti runs in Miami called the Miami Project to try to find a cure for spinal injury, disabling injuries. His own son, as you know, was injured in a football game.

I came to know the Africk family through those tournaments, those charity tournaments we participated in together to help that project. And as I came to know them, I also came to know not just Jack but his family, and Lance, and later on had the honor of recommending Lance for the magistrate position in New Orleans.

John said it best. I can't tell you how proud we are of this nominee. We always stand together with our nominations—you will notice that—the House and the Senate, across party lines. We bring—

Chairman LEAHY. I have got to tell you, that makes our life a lot easier up here.

Representative TAUZIN. I know it does. And John and Mary and I and the House delegation wholeheartedly concur in this one again. And we are particularly honored to speak for Lance Africk here.

John mentioned he has hit the ground running because of his experience as a magistrate. What is amazing about his background is that, you know, he has touched so many bases. He has worked in the district attorney's office, the U.S. Attorney's Office. He is an instructor at the University of New Orleans right now in civil and criminal procedure, the two courses, I think, that gave us the biggest ulcers in law school. Really tough courses. He has lectured at Tulane, at Loyola, and also at the FBI Academy at Quantico. So he brings a wealth of experience in practice, in prosecutorial work, in civil work, in the intellectual side and teaching and understanding the nuances of the law and the procedures by which justice is obtained in our country.

I want you to know that, on behalf of the people of the Eastern District, we are delighted, Senator Specter, Senator Hatch, and Mr. Chairman, that you will take up his nomination and hopefully speedily approve it.

He is going to add immeasurably to the sense that we have in the Eastern District that justice is real, that is alive, that it works, and that it works well.

Lance is also married to a physician, a noted pediatric neurologist, and I want you to know that your elevation of Lance to the position of Federal judge is going to help him immeasurably, because he is frankly tired of being introduced as his wife's husband, and this will give him some credibility on his own in terms of his standing in the community.

His entire family are just so genuine and they are so good that it makes some sense that this young man reared in a family like that is so solid and so exemplary, both in his professional life and his personal life. He is just a joy to know, and the family is a joy to know. And he will make an extraordinary judge, and he will literally add, I think, a real star to the chamber of stars that is our Federal judiciary.

Mr. Chairman, on behalf of the entire House delegation, I am extraordinarily pleased to join my two friends, John Breaux and Mary Landrieu, in urging you to speedily approve Lance Africk as a Federal judge for the Eastern District of Louisiana.

Chairman LEAHY. Well, thank you very much, Mr. Chairman, and I do appreciate you coming here. As I said, the kind of bipartisan support that you put together and the effort you put together

to have somebody who has strong consensus is very, very helpful. And I realize also you have to get back to another hearing, but thank you.

Representative TAUZIN. Thank you, Mr. Chairman.

Chairman LEAHY. I will put a statement by Senator Landrieu also in the record praising Lance Africk, and that will be added.

I see that Senator Specter is here, and so I will yield to him. We noted before that you were tied up in another meeting and could not be at the earlier introduction, but go ahead.

**PRESENTATION OF LEGROME DAVIS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

I am pleased to join my colleague, Senator Santorum, who I know has already been here, to introduce to the committee Judge Legrome Davis, who has been nominated by President Bush for the United States District Court for the Eastern District of Pennsylvania. Judge Davis had been previously nominated in the last Congress by President Clinton for the same position.

Judge Davis has an outstanding academic background. He is a Princeton graduate, Rutgers University School of Law in 1976. He has worked with a prestigious Philadelphia law firm, the Ballard, Spahr office. He was in the general counsel's office at the University of Pennsylvania. He was in the district attorney's office from 1981 to 1987 and handled many very complicated prosecutions. I know from my own experience in that office that the trial work and the experience that you gain there is extraordinary, a very, very difficult line of lawyering.

Most importantly, Judge Davis has been on the Philadelphia Court of Common Pleas for some 14 years, and he has been an administrator, has had very extensive experience as a trial judge in both the civil and criminal fields. He has extraordinary qualifications. I think that Judge Davis' record and background would match anyone who has been submitted for the United States district court for many, many years. So I am very pleased to recommend him to the committee. From my experience here, he will go through with flying colors.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you very much, and I must say to the nominee that Senator Specter has also said very good things about you privately before, too, and I appreciate you doing that.

Senator SPECTER. Mr. Chairman, I think it is also worthy of note that Judge Davis is a product of an arrangement which we have to share confirmations with a Republican President with Democrats. We have an arrangement worked out that we share. We had a period of time where there were, out of 24 years, 20 years of one party occupancy of the White House, and during that period many very fine young lawyers from the other party were denied access to the Federal bench. And we have an arrangement now to correct that, regardless of which way the White House goes.

Chairman LEAHY. Well, I applaud the Senator for that, and, again, that kind of arrangement makes life a lot easier for this committee, too.

Chairman LEAHY. If we could start with Judge Terrence O'Brien, if you could come forward, please, Judge. Would you raise your hand? Do you swear that the testimony you shall give here shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. O'BRIEN. I do.

Chairman LEAHY. Judge O'Brien, I know you have got members of your family here. I wonder if you might want to introduce them to the committee.

**STATEMENT OF TERRENCE L. O'BRIEN, NOMINEE TO BE  
CIRCUIT JUDGE FOR THE TENTH CIRCUIT**

Mr. O'BRIEN. If I may, I would like to introduce my son and my daughter-in-law, Sean and Shanna O'Brien, and my good friend, Sandra Napier. My daughter, Heather, lives in Lawrence, Kansas, and was unable to attend today, but she is here with me in spirit.

Chairman LEAHY. Well, that is going to help you right off the bat, I would hope, with Senator Specter, who was born in Lawrence, Kansas. Am I right?

Senator SPECTER. I am sorry. I didn't hear that.

Chairman LEAHY. You were born in Lawrence, Kansas, were you not?

Senator SPECTER. Correct, yes.

Chairman LEAHY. That is where your daughter is. The reason I like to have that on the record, someday in the O'Brien family archives, when they go back to the record, you can all point to the fact that you were there.

Judge O'Brien, did you wish to make an opening statement, sir?

Mr. O'BRIEN. I have no statement except to thank the committee for the hearing.

Chairman LEAHY. Well, thank you.

You know, I look at your record as a state trial court judge, and the two Senators from your State have referred to it already. I believe it was 20 years. It is a distinguished record. And I assume as a trial court judge, you derived a great deal of satisfaction out of that position. I am one who always feels that trial courts are in many ways the most interesting, even though I did a lot of appellate work. But I am wondering why you left the bench in the year 2000, I believe, but are interested now in coming back to the bench.

Mr. O'BRIEN. Well, Senator, I have had an abiding interest in the Federal judiciary since law school. The time that I spent on the—

Chairman LEAHY. Pull the microphone a little bit closer.

Mr. O'BRIEN. The time that I spent on the trial bench in Wyoming was rewarding for me, but there comes a time when there is a certain sameness to that, and also there comes a time, I think, when you need to yield to new blood and new ideas. And that time came for me after 20 years on the trial bench.

I retreated from direct dealings with the law and involved myself with a small Internet service provider, a small company in my hometown. The opportunity presented itself with respect to the Tenth Circuit, and I felt that calling rather strongly and applied.

Chairman LEAHY. You delivered a number of speeches on the criminal law and criminal defendants. You stated that some criminal defendants are not educable, they need to be trained. You then made a comparison as to how to train dogs.

Now, I love dogs, and I believe in the old—people say you can't teach an old dog new tricks and all. But is it really right to be comparing criminal defendants, human beings, to dogs? Do you want to say more about that, please?

Mr. O'BRIEN. Well, Senator—

Chairman LEAHY. And I was a prosecutor. I prosecuted a lot of people, but I just found the comparison a tad troubling.

Mr. O'BRIEN. It was for dramatic effect, and the caveat that I expressed in that talk, prior to making that remark, I think said precisely what you said. That is not—that people are not like animals. And the point that I was trying to make is that, regardless of your motivation, you need to try everything that is possible in order to bring all members of society within societal norms.

Chairman LEAHY. Well, let me add, though, on the other side—and, of course, you have made a number of what I consider very positive contributions to the Wyoming State court procedures over the years. I hope the people of Wyoming feel the same way. You established or helped to establish State drug courts along with alternative sentences, something now more and more States are looking at, including States much larger than your State of Wyoming or my State of Vermont, the two smallest in population, two smallest States in the country.

But given that kind of leadership, would you be reluctant to apply the Federal Sentencing Guidelines, including where there are tough mandatory minimum sentences in cases involving drug crimes?

Mr. O'BRIEN. Senator, as part of a continuing interest that I had almost from the inception of my appointment to the trial bench and throughout my career was an interest in effective criminal administration. And I can tell you that I was one of the few voices in the Wyoming judiciary that favored sentencing guidelines.

There are, I know, those who think that the Federal Sentencing Guidelines are harsh in some respects. I had a reputation in Wyoming, I think, of being a rather stern judge. The sentences that I imposed for drug offenses I think were typically not as rigorous as those that may be imposed under the Federal Sentencing Guidelines.

Nevertheless, I believe that the guidelines are appropriate to bring regularity and evenness to the process. I have no compulsion following the sentencing guidelines.

Chairman LEAHY. You decided a case entitled *Brown v. Wyoming* in 1987. You declined to suppress evidence that was obtained in a protective sweep of a house. The person arrested actually was not arrested in the House, was arrested outside the house, but the police still did a protective sweep of the house.

You did not suppress the evidence obtained there, and you were overturned. You actually had a couple other reversals that referred to cases where you refused to suppress evidence that was obtained, as the appellate court said, in violation of the law. Are you reluctant to suppress evidence obtained in a case where it might be in

violation of the law even when such a result is required by precedent?

Mr. O'BRIEN. Absolutely not. As a matter of fact, I have done that. Those cases typically don't get appealed. The case that you are referring to, *State v. Brown*, was reversed 3–2 by the Wyoming Supreme Court. There was no independent Wyoming standard at the time. I think I applied Federal standard and applied it correctly. The Supreme Court announced further protections under the Wyoming Constitution.

Chairman LEAHY. As a Federal court of appeals judge, you are going to be called to interpret case law as it applies to cases before you, and I am sure you have no difficulty with stare decisis as it applies to cases of the U.S. Supreme Court. You certainly accept that they are controlling. Is that not so?

Mr. O'BRIEN. Absolutely.

Chairman LEAHY. What do you do when you get into a case of first impression? Because you probably will if it gets all the way up to the court of appeals.

Mr. O'BRIEN. You first look, of course, to the decisions of the United States something and would follow any precedent that is there. Next, of course, I would look at any precedent that may have been established in the Tenth Circuit by a panel of that circuit. Following that, I would apply the generally accepted rules of construction that statutes are presumed to be constitutional, that the findings of Congress with respect to statutes are entitled great deference, that a decision on a constitutional basis is a decision of last resort, that you look for other possibilities before you come to a decision of constitutional magnitude; and if you must, you decide it as narrowly as possible.

Chairman LEAHY. And even then it is not an exact science.

Mr. O'BRIEN. I think not.

Chairman LEAHY. I was thinking of *Metropolitan Mortgage*, which was a contract case. Do you think the Wyoming Supreme Court was correct in that case? I am not trying to put you on the spot. I am just curious because they really go into this question of a judge's role in interpreting a contract, which also could be said, the same thing, about statutes and the Constitution.

Mr. O'BRIEN. I looked at that case last night. It involved a contract for deed. I had interpreted the instrument as being unambiguous, that it provided that if the payments were made, the land would be delivered, but only if the payments were made.

The mortgage company was arguing for a deficiency judgment. It did go to the Supreme Court. One of the justices of the court agreed with me that the contract was unambiguous and that it was a unilateral contract. One of the justices thought that it was unambiguously a bilateral contract, and another justice concurred with him. Two of the justices thought that it was ambiguous. And it was remanded, but I think it settled.

I think I did say in—

Chairman LEAHY. You have a lot of people looking at it all different ways, is what you are saying.

Mr. O'BRIEN. Yes, sir, and I did emphasize in that opinion that—and it has been, I think, one of the hallmarks of my time on the district bench that I had strong feelings about what I intuitively

thought the parties had agreed to. I tried to make it clear in that decision that I couldn't base my decision upon what intuitively I thought, but based upon the written language of the Constitution and my understanding of the law. That is what I tried to do, apparently unsuccessfully.

Chairman LEAHY. I appreciate that. You also back about 8 years ago, before it was really a popular thing to start doing, you got the Rotary Club to admit women. Am I correct in that?

Mr. O'BRIEN. Yes, sir, you are.

Chairman LEAHY. Was that a heavy lift or did people go along with you right away?

Mr. O'BRIEN. There was opposition in the club. There were some of the moss-backs who liked it the way it was, who resisted change. Fortunately, there were other members of the club who were more progressive. We did prevail upon the membership to admit women, and I am pleased to say that, while I am no longer a member of the club, it has a number of women members. In fact, it has three women members on the board at this time.

Chairman LEAHY. I suspect you had the same difficulty that some of my friends in Vermont did doing the same thing. And now, of course, everybody looks back and says how—I mean, why shouldn't it be that way? But it took some—it took people like you to turn a light on and say let's go forward, so I applaud you for that.

Mr. O'BRIEN. Thank you.

Chairman LEAHY. Senator Hatch?

Senator HATCH. I am going to support the nomination. I have looked over your record and what you have been able to do, and I just want to congratulate you on being nominated by the President. So I tend to support you.

Mr. O'BRIEN. Thank you, Senator.

Senator HATCH. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. With those tough questions from Senator Hatch, I yield to Senator Durbin of Illinois.

Senator DURBIN. I am going to pass and thank Judge O'Brien for being with us today.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Senator Specter, did you have any questions?

Senator SPECTER. Well, thank you, Mr. Chairman. I have reviewed Judge O'Brien's record, and I think he is a very, very experienced judge. I notice you have had a number of interesting cases. When I was practicing law, I had one of these cases involving a challenge by an employee to a discharge in a jurisdiction which had employment at will. You can fire anyone for no reason, but you can't fire someone for a bad reason.

Did the case of *Drake v. Cheyenne Newspapers* give you some pause before coming to your conclusion, Judge?

Mr. O'BRIEN. It struck me as anomalous that a newspaper championing freedom of speech sought to suppress the free speech rights of one of its employees. Nevertheless, I believe the law was clear.

Senator SPECTER. You thought the newspaper was within its rights in terminating the individual?



Mr. O'BRIEN. Yes, sir, I did. That was affirmed by the Wyoming Supreme Court.

Senator SPECTER. I was about to reminisce with you about the case I had, but I think I won't in the interest of time.

Chairman LEAHY. Go ahead. [Laughter.]

You know, one of the things about people who come on this committee who have practiced law before, in whatever form, we all have great war stories, and we all have to resist, the chairman especially, the temptation to tell them. But I applaud the Senator for—

Senator SPECTER. I may change my mind.

Chairman LEAHY. I enjoy listening to them. I enjoy listening to them, so you feel free to go ahead.

Senator SPECTER. But I am not going to change my mind because it is in the book I wrote. [Laughter.]

Chairman LEAHY. Which is still available.

Senator SPECTER. I am about to come to that. I was one of the younger lawyers—I am still a young lawyer. I was one of the younger lawyers on the Warren Commission staff and came up with the single-bullet theory. You have probably heard of it. It has had a lot of criticism for the past 34 years, so I decided to write down how the conclusion was reached while I was still able to write, and in the course of that, I also wrote about a case called *Felder v. Spencer Gifts*, which was an employment-at-will case. And anybody who is interested can find it in paperback at \$14.75. [Laughter.]

Thank you, Mr. Chairman.

Chairman LEAHY. Plus tax. But whatever you do, Judge, you are doing okay so far. So don't take a position on the single-bullet theory one way or the other.

I thank you very much.

Mr. O'BRIEN. Thank you.

[The biographical information of Mr. O'Brien follows:]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Terrence Leo O'Brien
2. Address: List current place of residence and office address(es).  

Home	Gillette, WY
Work	Kennecott Energy Company 505 South Gillette Avenue Caller Box 3009 Gillette, WY 82716-3009
3. Date and place of birth  

August 8, 1943	Lincoln, Lancaster County, NE
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4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
Divorced
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  

Sep 1969 - May 1972	Law School, University of Wyoming JD, with honors June 1972
Sep 1961 - May 1965	University of Wyoming, Laramie, WY BS, Accounting June 1965
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.  

Jun 2001 - Present	Legal Consultant Kennecott Energy Company 505 South Gillette Avenue Caller Box 3009 Gillette, WY 82717-3009
Aug 2000 - May 2001	President Visionary Communications, Inc. 301 South Douglas Highway Gillette, WY 82716

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Oct 1997 - Dec 1999	Oak Rim Ranch, LLC President/Member Gillette, Wy 82716	
July 2000 - May 2001	Highland Signals, LLC Manager/Member Gillette, Wy 82716	
Aug 1980 - Aug 2000	District Judge Sixth Judicial District Courthouse, 500 South Gillette Ave. Gillette, WY 82716	
Aug 1974 - Aug 1980	Proprietor/Associate Omohundro & O'Brien (Not a partnership) 100 South Main Street Buffalo, Wyoming 82834	
Sep 1972 - July 1974	Staff Attorney, Appellate Section Land & Natural Resources Division Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530	
Summer 1971	Decker Coal Company Post Office Box 12 Decker, MT 5902	
Summers and School breaks 1960-65 & 1969-70	Rosebud Coal Sales Company Post Office Box 780 Hanna, WY 82327	
Sep-Dec 1965	Western Paving, Inc. Address Unknown Denver, CO	
<b>Non-Profit:</b>		
Gillette Rotary Club President		1981 - 1995 (Est) 1993 - 1994 (Est)
United Way of Campbell County Board Member		1983 - 1985 (Est)
Campbell County Health Care Foundation Board of Directors President		1989 - Present 2000 - Present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Jan 1966 - Aug 1969	U.S. Army, Ordnance Corps Captain, 05535392 Honorable Discharge
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8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Land & Water Law Review	1970-1972
Land Division Editor	1971-1972
Wyoming Law Scholarship	1970
Business Law Teaching Assistantship	1971
Phi Kappa Phi, Scholastic Honorary	1970

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association	1972 - 1984 (approx)
Wyoming State Bar	1972 - Present
Bench-Bar Relations Comm	1984 - 1986 (approx)
Survey Committee	1988 - 1989
Criminal Jury Inst Comm	1995 - 1996 (approx)
Colorado State Bar	1993 - Present

In 1999 and 2000 I was an active member of a Drug Court task force. The team was formed to evaluate the need for a drug court in Campbell County. We met repeatedly to investigate and consider options. We decided to apply for an implementation grant. I actively participated in all phases, including grant writing and was to be the first drug court judge. The grant attempt was not fruitful, but a grant has now been obtained to implement a program and the State has decided to fund drug courts as well.

I was a member of the Judicial Supervisory Commission (now known as the Commission on Judicial Conduct and Ethics) for one four year term from Feb. 1991 to Feb. 1995. During that time the Commission had many routine matters and two contested disciplinary matters. One was extremely contentious. The committee also decided to completely revise the structure and composition of the committee, as well as the procedures. I was actively involved in the drafting process. We suggested a constitutional amendment which was adopted by the legislature and ratified by the voters. Following the constitutional amendment the statutes were amended, as were the rules of the commission which can be found at <http://courts.state.wy.us/RULES/Rules%20Governing%20the%20Commission%20on.html>

I was chairman of the Wyoming Judicial Conference for one year in the mid 1980s.

For several years (approximately 1990 to 2000) I was chairman of the Criminal Rules Advisory Committee to the Supreme Court. During that time I supervised a complete re-writing of the rules to make them more compatible with the federal rules, but retaining procedure particular to Wyoming. The criminal rules are contained in Vol 2A of the Wyoming Statutes and can be found at <http://courts.state.wy.us/RULES/Criminal%20Procedure.html>

I was a member of the Child Support Advisory Committee. The committee worked out the strategies and procedures for computerization of child support collection. The child support compensation statutes were largely rewritten. Along with others, I was responsible for rewriting the relevant portions of the statutes. The committee drafted statutory language which, among other things, revised the presumptive child support guidelines and tables, provided a mechanism to consider the income of both parents in computing support, provided for abatement, established a mechanism and guidelines for deviation from presumptive support, and provided a procedure for adjusting child support periodically. The committee drafted changes to related statutes to make them compatible with the recommended revisions. Most of the changes are contained in Wyoming Statutes §§ 20-2-301, et seq. and can be found at <http://legisweb.state.wy.us/statutes/titles/title20/c02a03.htm>.

I recommended and drafted the first split sentencing statute, Wyoming Statute § 7-13-107. It has since been modified to some degree; the current version is available on the web at <http://legisweb.state.wy.us/statutes/titles/title07/c13a01.htm>.

10. **Other Memberships:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to no organization that is active in lobbying before public bodies.

Campbell County Health Care Foundation	
Board of Directors	1990 - Present
President	2000 - Present

11. **Court Admission:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Wyoming State Bar	September 1972
U.S. District Court, Wyoming	September 1972
U.S.C.A. - Tenth Circuit	November 1972
U.S.C.A. - Seventh Circuit	December 1972
U.S.C.A. - Ninth Circuit	February 1973
U.S.C.A. - Eighth Circuit	April 1973
U.S.C.A. - D.C. Circuit	May 1973
U.S.C.A. - Second Circuit	February 1974
U.S.C.A. - Fourth Circuit	February 1974
U.S. Supreme Court	December 1975
Colorado State Bar	November 1993

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Comment: Subsidence Regulation VI Land & Water Law Review 543  
1970-1971

Comment: Remedial Title Legislation VII Land & Water Law Rev. 561  
for Wyoming 1972

Copies of the law review comments are attached.

Also attached is a copy of a sentencing speech I gave at a state law enforcement convention in the early 1980s. I gave a slight variant of that speech to the Five State Judicial Conference (Idaho, Montana, North Dakota, South Dakota and Wyoming) in the summer of 1995 (approx).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent Last Physical - May 2001

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1975 - Aug 1980 Justice of the Peace (Part time), Buffalo, Wyoming  
limited jurisdiction (misdemeanors, under 6 months imprisonment or \$750 fine, preliminary hearings in high misdemeanor and felony cases, civil cases under \$1000),  
appointed to fill unexpired term of predecessor, then elected to a four year term.

Aug 1980 - Aug 2000 District Judge, Sixth Judicial District, Gillette, WY  
General Jurisdiction (civil cases over \$7,000, felonies, probate including guardianships and conservatorships, review of agency decisions, appeals from county and justice courts).  
Appointed from merit selection list in June 1980  
Retained by voters 1982, 1988, and 1994

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Occasionally (by assignment) I participated on the Wyoming Supreme Court, deciding cases. I wrote four opinions:

**Pickle v. Bd. of County Commissioners**, 764 P.2d 262 (Wyo., 1988) -- dissent  
**Nowack v. State**, 774 P.2d 561 (Wyo., 1989)  
**Hatch v. State Farm Fire & Casualty Co.**, 930 P.2d 382 (Wyo. 1997) -- concurring  
**State, ex. rel., Wyo. Workers Compensation Div. v. Bergeron**, 948 P.2d 1367 (Wyo. 1997)

Copies of the following opinions I wrote for the district court are attached:

**A v. XYZ** (Civil 10789) was a very interesting case involving statutory interpretation of the paternity statute and constitutional issues. A copy of my opinion letter is attached. *Affirmed*, 641 P.2d 1222, cert. den. 459 U.S.1021. Years later, in a similar case a narrowly divided U.S. Supreme Court reached approximately the same result. See, *Michael H. & Victoria D. v. Gerald D.*, 491 U.S. 110.

**Palmer v. Crook County School District** is a judicial review under the administrative procedures act. Copy attached. *Affirmed*, 785 P.2d 1160.

**Marquiss v. Marquiss** was a domestic relations case interpreting federal law and synthesizing state and federal law. A copy is attached. In *Marquiss v. Marquiss*, 837 P.2d 25, the Wyoming Supreme Court reached an identical result.

**Ames v. Sundance State Bank**, *affirmed* 850 P.2d 607, granted judgment NOV.

**Exxon Coal v. West Texas Utilities**, three letter opinions attached, *affirmed in part and reversed in part*, 807 P.2d 932, jurisdiction and contract interpretation.

**Oedekoven v. Christiansen**, *affirmed* 888 P.2d 228, partnership law, copy attached.

Following is a list, with summary, of cases in which I was reversed.

**9 P.3d 973 (Wyo. 2000) Paugh v. State**

This burglary case was reversed because a locked three-foot fishing reel display case in a department store is not a "separately secured or occupied portion" of a "building" within the meaning of Wyoming's burglary statute. The Supreme Court held that to qualify as "separately secured or occupied," a room or container must be large enough to be occupied by a human being.

**988 P.2d 1071 (Wyo. 1999) McChesney v. State**

McChesney entered a conditional plea of guilty after his motion to suppress evidence was unsuccessful. He was the object of a REDDI (Report Every Drunk Driver Immediately) report made by a motorist to the highway patrol indicating erratic driving. An officer verified the description of the car when it exited the interstate highway and he followed it into the parking lot of a convenience store. He pulled in behind, activated his lights and approached the driver, asking for his license. When he made contact with the driver the officer noticed marijuana on his shirt and detected

its odor. Upon questioning, the defendant admitted to having earlier smoked marijuana and he gave the officer a bag of marijuana he had in his possession. Further search revealed more. The Supreme Court concluded it was an error not to suppress the evidence and held that an officer must establish probable cause to stop a motorist independent of a REDDI report.

**971 P.2d 608 (Wyo. 1999) Watt v. Watt**

I decided the underlying custody case in 1995. The issue of custody was difficult because both parents were active with and attentive to their children. Both parents testified that they wanted their children raised in a rural environment (their home town is very small, numbered in the hundreds) and that daily contact with extended family, who lived in the town, was very important to them. In fact, the children enjoyed a close relation with grandparents on both sides as well as with other relatives. During the trial Mrs. Watt was asked specifically about her future intentions. She was emphatic that she intended to remain in their home town and that it was extremely important to her for the children to be raised in a small town, close to relatives. She said she would not deprive the children of that opportunity. Had it not been for that testimony I would have placed the children with their father. I considered the father the better custodial parent but he commuted to work in a nearby town. Assuming the mother had been truthful regarding her intentions, I decided that it was more convenient for the children to reside with her. A little more than a year later I was much surprised to find a petition to change custody because the mother had enrolled in pharmacy school in a much larger community some 250 miles distant. After a hearing I changed custody. The Supreme Court reversed, holding that the move did not amount to a change in circumstances sufficient to justify a change in custody. It was also concerned that fear of losing custody of children might somehow chill, or at least implicate, a constitutional right to travel.

**964 P.2d 1259 (Wyo. 1998) Wood v. Wood**

Wood and his wife had two children. She also had two children from a prior marriage, which Wood had adopted. He sexually molested one of the adopted children, for which he was incarcerated. The parties were divorced 7 months after his conviction. He was required to pay child support of \$930 per month. He paid during his incarceration, using his savings. He petitioned to have his child support reduced because his savings were depleted. However, he had been released from the penitentiary to a half way house where he worked full time, earning about \$1740 per month. He was required to pay the half way house \$300 per month for room and board. Concluding that he failed to show that his child support under the guidelines would be 20% less than originally ordered (the statutory requirement), I refused to reduce his child support. I also announced an alternative decision - even if the 20% change had been shown I would deviate from the guidelines (for reasons enumerated in the statute) and keep the child support at \$930 per month. The Supreme Court reversed, holding that I improperly imputed income to the parties in arriving at guideline support. It also held that my alternative reasoning (deviation from the guidelines) was erroneous.

**936 P.2d 61 (Wyo. 1997) Dunning v. Ankney**

In Wyoming a landowner who has no access to public roads may petition the county commissioners to establish a right of way. In essence, it is a non-judicial condemnation. The Sheridan County Commissioners had a hearing and concluded that



Dunning had not met the statutory requirements of good faith in bringing his petition in that he didn't adequately consider other possible routes across different lands and he failed to provide notice to or join landowners except those where he chose to put his road. The commissioners concluded that such action unreasonably restricted the viewers, who were tasked to locate the road and assess damages. I affirmed the decision of the Sheridan County Commissioners. The Supreme Court reversed, holding that the Board read the good faith requirements of the statutes too broadly.

**933 P.2d 1098 (Wyo. 1997) Wilder v. Cody Country Chamber of Commerce**

This employment case involved claims of breach of contract and promissory estoppel, along with a host of other claims. It was tried to a jury, which awarded damages to Wilder based upon promissory estoppel, including damages for future lost wages. On appeal the case was affirmed on most issues, but reversed with respect to future damages. The Supreme Court determined that such damages were not reasonable under the facts of the case.

**913 P.2d 870 (Wyo. 1996) Harston v. Campbell County Memorial Hosp.**

This medical malpractice case involved claims of negligent credentialing and negligent review of staff privileges. Seeking to encourage hospitals to be constantly vigilant in eliminating errors the Wyoming legislature enacted a peer review and professional accountability statute and made the proceedings and the fruits of the proceedings privileged. Harston sought to obtain such information from the hospital, arguing that it was necessary to pursue her claims. I refused to allow discovery, relying on the statute. The Supreme Court held that I should have inspected the documents in camera and made an independent evaluation, weighing privacy concerns against the litigation needs of the plaintiff.

**902 P.2d 1271 (Wyo. 1995) Smith v. State**

Smith was convicted by a jury of intimidating a witness. He was placed upon probation upon terms and conditions. He appealed and I appointed counsel to represent him on appeal. Since he was on probation and working I required that he contribute to the cost of the appeal. The conviction was affirmed, but the Supreme Court held that he could not be required to contribute to the cost of appellate counsel.

**902 P.2d 1288 (Wyo. 1995) In the Interest of BLM**

This case is a companion to the TLL case (below). TLL was adjudicated a "child in need of supervision" for refusing to abide the reasonable demands of her parents. She disregarded her parents generally and was out of their control, but of overarching concern was her dating an adult male (BLM) in spite of parental objections and attempts to curtail it. Upon evidence presented in the juvenile case I made a tentative determination that BLM had contributed to the circumstances bringing the girl under the jurisdiction of the juvenile court. As permitted by the juvenile statute, I issued an order making him a party to the proceedings and requiring that he cease association with the girl. The order was personally served upon BLM. It provided that if he disputed the underlying facts or the conclusion that he was a deleterious influence he could have a hearing by making a request within five days. He did not request a hearing, but impregnated the girl. He was adjudged guilty of criminal contempt of court. The Supreme Court reversed, holding that the process was insufficient.

**899 P.2d 44 (Wyo. 1995) In the interest of TLL**

Upon her admission TLL was adjudicated a "child in need of supervision" and, accordingly, she was subjected to supervisory orders of the juvenile court. She flagrantly violated those orders and was found to be in criminal contempt of court. I determined that her conviction of criminal contempt of court amounted to a delinquent act and committed her to the Girls School. The Supreme Court held that the conviction was insufficient; a separate juvenile petition should have been filed as a procedural predicate to the placement.

**899 P.2d 879 (Wyo. 1995) Claim of Moriarity**

Moriarity asserted a claim in a receivership of a failed life insurance company. I held that the claim was barred by a prior determination - res judicata or collateral estoppel. The Supreme Court held that the limited scope of the prior hearing was insufficient to create a bar to the asserted claims.

**895 P.2d 454 (Wyo. 1995) Sorensen v. State**

A jury found Sorensen guilty of molesting his 13 year old daughter for several years. The Supreme Court reversed on two grounds. First, for failure to announce on the record findings on a evidentiary determination (Rule 404(b), Wyoming Rules of Evidence) that the probative value of prior bad acts evidence outweighed the unfairly prejudicial effect (The specific requirements for record findings was instituted by a decision of the Court, but was quickly abandoned by a subsequent decision). The second reason for reversal was for admitting expert testimony relating to "traumagenic dynamics." The Supreme Court held that such evidence was not sufficiently accepted in the scientific community.

**884 P.2d 971 (Wyo. 1994) Ferguson v. Coronado Oil Co.**

This jury trial involved oil and gas developers and issues of fraud and conversion of assets. It was affirmed on all issues except as to the amount of an award of interest.

**875 P.2d 1258 (Wyo. 1994) Smith, Keller & Associates v. Dorr & Associates**

This case involved the dissolution of an accounting partnership and the accounting for assets. It was complicated by protracted proceedings in bankruptcy court. Specifically, the issues in this appeal related to a determination by an arbitration panel. In reversing, the Supreme Court held that the appellant was entitled to a second post-dissolution accounting. It also reversed a summary judgment for fraudulent conveyance of assets, holding that material facts remained unresolved.

**862 P.2d 144 (Wyo. 1993) Tolar v. Amax Coal Co., a Div. of Amax, Inc.**

This was an appeal from a summary judgment. Tolar's owned a small country store that failed, forcing bankruptcy. When high concentrations of methane gas were discovered in the area the Campbell County Commissioners ordered a nearby rural subdivision evacuated. Ultimately most of the residents moved. Tolars sued Amax, alleging that the failure of their business resulted from the evacuation of the subdivision, which, in turn, was due to escaping methane caused by mining operations. Amax denied fault, but moved for summary judgment only on the issue of damages. It argued that the dramatic drop in energy prices in the 1980s and the resultant general downturn in the regional economy, which persisted for several years, was the cause of the business failure. Its arguments were supported, along with other evidence, by

unrefuted evidence that the business had lost money in each of the ten months preceding the evacuation. The Supreme Court held that factual issues remained unresolved.

**848 P.2d 783 (Wyo. 1993) Coones v. F.D.I.C.**

This very convoluted case involved three appeals in different cases from orders entered by Judge Al Taylor and by me. It involved bankruptcy petitions in Wyoming and South Dakota. The Wyoming bankruptcy case was appealed to the Federal District Court, which affirmed, then to the Court of Appeals, Tenth Circuit, which affirmed. The U.S. Supreme Court granted certiorari as to one issue and reversed for reconsideration. In reversing my decision the Wyoming Supreme Court held that the FDIC, which had foreclosed a mortgage and had possession, could sell the property, but was not entitled to a deficiency judgment as well. It also reversed on issues I did not decide.

**846 P.2d 679 (Wyo. 1993) Calene v. State**

This case was Judge Timothy Judson's (at the time he was the other judge in the Sixth Judicial District). He completed this case just before he left the bench. I merely signed the order after his departure.

**841 P.2d 811 (Wyo. 1992) Dorr, Keller, etc, et al v. Dorr, Bentley, etc., et al.**

An accounting partnership had dissolved. The issues of winding up were submitted to arbitration and the arbitrators entered an award. Some of the parties filed a petition for bankruptcy. This case was for a declaratory judgment relating to winding up. The Supreme Court reversed the declaratory judgment because the case was brought in violation of the bankruptcy stay.

**837 P.2d 25 (Wyo. 1992) Marquiss v. Marquiss**

This case involved the Federal Parental Kidnapping Protection Act and the Uniform Child Custody Jurisdiction Act. It was affirmed on all issues except an award of attorney fees, which the appellee conceded was improper. Interestingly, while accepting the concession and reversing on that point the Supreme Court went on to hold that the award of attorney fees was proper.

**826 P.2d 251 (Wyo. 1992) Cranston v. Weston County Weed and Pest Bd.**

This governmental immunity case involved allegations that employees of the county weed and pest board were negligent in spraying for pests and contaminated the appellants water supply. It was affirmed on most issues but a summary judgment entered on the issue of negligent appointment of the Weed and Pest Board by the county commissioners was reversed. Also reversed was a dismissal of that part of the complaint alleging that the county was insured (governmental immunity is waived to the extent of insurance). On both issues the Supreme Court decided that factual issues remained in dispute.

**824 P.2d 560 (Wyo. 1992) Bredthauer v. Christian, Spring, Seilbach and Associates**

This was a negligence action brought against surveyors for errors in a land survey. I granted summary judgment to the surveyors based upon the two year statute of limitations. The Supreme Court reversed, holding that the statute started to run, not on the date appellants were advised by the title company that it would not

continue to issue title insurance because of survey discrepancies (as I determined), but on a later date when an expert employed by their attorney formally advised that there were survey errors.

**820 P.2d 969 (Wyo. 1991) Black v. State**

This case was reversed for failure to suppress a defendant's confession. The police suspected the defendant and her husband of dealing drugs. The officers questioned Mr. Black at the police station and at the end of the interview they said they had some questions for his wife (the defendant) and asked if he would bring her to the station. He agreed and both he and the defendant came to the station in their car the next morning. She was questioned for about two hours in his presence. Before the interview she was told that she was not under arrest, that she did not have to answer questions and that she was free to leave at any time. She agreed to answer questions. She was seven months pregnant, distraught, and cried at times during the interview. She confessed to selling drugs. After the interview she and her husband left in their car. Months later she was arrested. I did not suppress the confession, finding it to be free of coercion. The Supreme Court reversed. For obvious reasons it did not rely on Federal law. Instead, breaking new ground, it announced a decision based upon the Wyoming Constitution.

**816 P.2d 868 (Wyo. 1991) Metropolitan Mtg. & Securities Co., Inc. v. Belgarde**

This case involved the interpretation of a real estate sales contract. I determined that the contract was not ambiguous and granted summary judgment accordingly. The Supreme Court held that the contract was ambiguous and remanded the case for trial.

**807 P.2d 932 (Wyo. 1991) West Texas Utilities Co. v. Exxon Coal USA, Inc.**

As the name suggests, this was a case between a utility and a coal mine involving a long term and intricate coal supply contract. My decision was affirmed for the most part, but reversed as to damages; the Supreme Court decided that my decision on that issue was premature. It was also reversed on the issue of the justiciability of a contract performance claim under the declaratory judgments act.

**797 P.2d 1171 (Wyo. 1990) Nuile v. Gillette-Campbell County Joint Powers Fire Bd.**

This was a case of first impression. Because there was no Wyoming case or statute recognizing such a right, I dismissed a claim made on behalf of children for loss of parental consortium resulting from their father's personal injury. The Supreme Court reversed and announced that such a right exists in Wyoming.

**783 P.2d 144 (Wyo. 1989) Burg v. Ruby Drilling Co., Inc.**

This case involved an oil and gas production contract, which was drafted without the aid of counsel. It was affirmed in part and reversed in part. It was reversed as to the application of a statutory oil and gas lien and as to attorney fees.

**770 P.2d 215 (Wyo. 1989) Wyoming Nat. Bank of Gillette v. Davis**

This case involved priority among competing lien creditors. It reversed a nunc pro tunc order as improper because the order, entered in the spring term of court, amended an order entered in the prior term.

**770 P.2d 1089 (Wyo. 1989) Matter of Larsen**

An individual injured at work was receiving temporary disability payments. With the employer's motion for summary judgment was an affidavit of an investigator supported by photographs, describing how the worker, who was unable to return to his job, was doing ranch work and work at a rodeo (not a contestant). That material was not refuted, but the worker and his doctor signed affidavits that he performed the ranch and rodeo work out of extreme economic necessity and in spite of pain. Summary judgment was reversed because material issues of fact remained unresolved.

**766 P.2d 1149 (Wyo. 1988) Gist v. State**

A jury conviction for delivery of controlled substances was reversed. The Supreme Court held that the defendant should have been permitted to impeach, by extrinsic evidence, the testimony of an undercover officer that he (the officer) simulated the use of drugs but didn't use drugs.

**761 P.2d 91 (Wyo. 1988) Eatherton v. State**

This burglary conviction was reversed because a lesser included offense instruction should have been given to the jury.

**738 P.2d 1092 (Wyo. 1987) Brown v. State**

This drug conviction was reversed for failure to suppress evidence. The police suspected the defendant and her boyfriend of dealing drugs. As they watched her house they discovered that there was an old, but active, warrant for her arrest. They kept her house under surveillance while obtaining the warrant. Upon serving the warrant they did a "protective sweep" of the house, which revealed drugs in plain view. They then obtained a search warrant for a more detailed search, which revealed more drugs, scales, and other drug paraphernalia. The Supreme Court decided that the search was mere pretext and the fruits should have been suppressed.

**737 P.2d 336 (Wyo. 1987) Gist v. State**

This conviction was reversed because defendant did not enjoy effective assistance of counsel.

**723 P.2d 1230 (Wyo. 1986) WYMO Fuels, Inc. v. Edwards**

This case reversed a decision under the Wyoming surface mining statute regarding resident surface owner consent to strip mining. The Supreme Court held that the mining company's condemnation of rights of way for a railroad and for haul road obviated the need for the consent of the servient surface owner.

**723 P.2d 58 (Wyo. 1986) Matter of Injury to Corean**

This case reversed a determination that an employee was not at work when he was injured as a result of his personal vehicle skidding on ice while he was en route to his work site to start his shift. Sometimes he would stop at his employer's ranch house for instructions and would carry tools in his vehicle to the work site. On the day he was injured he had some employer's tools in his vehicle from the day before but he did not stop at the ranch house. The Supreme Court held that because he was furthering his employer's interest by transporting the tools he was "at work" at the time of the injury.

**713 P.2d 1155 (Wyo. 1986) Matter of Injury to Spera**

The Supreme Court reversed my determination that temporary disability benefits (lost wages) under the worker's compensation statute should not be paid to an individual while he was incarcerated.

**709 P.2d 1278 (Wyo. 1985) Lewis v. State**

Lewis was charged with several aggravated felonies. He entered pleas of not guilty and not guilty by reason of mental illness or deficiency (NGMID). Some time elapsed between the commission of the crimes and his arrest. In the interim the mental illness statutes changed. The old statute required the state, in the face of a NGMID plea, to prove fitness beyond a reasonable doubt. The new statute required the defendant to prove lack of fitness by a preponderance of the evidence. Several times I suggested to the attorneys that they might want to consider whether the change was procedural or substantive and that they should submit briefs. I received no response, so I advised counsel that I would instruct the jury using the new statute. All attorneys agreed that the new statute applied and the defense specifically consented to such an instruction to the jury. The Supreme Court held that the change was substantive and the jury should have been instructed under the old statute.

**709 P.2d 414 (Wyo. 1985) Metzger v. Kalke**

This case involved the statute of limitations in medical malpractice. In reversing the Supreme Court held that the statute started to run when the appellant "actually" discovered the negligence, contrary to my decision which based the running of the statute on the date she went to see an attorney regarding the matter. The Supreme Court also reversed a summary judgment in favor of the doctor holding that in his motion for summary judgment the doctor was obligated to affirmatively show an absence of negligence and could not simply rely upon the fact that no witness or a combination of witnesses, including plaintiffs medical experts, had established the elements of negligence in deposition testimony.

**708 P.2d 1245 (Wyo. 1985) Seafirst Mortgage Corp. v. Specialty Concrete Const.**

Specialty filed a mechanic's lien against real property and, within the prescribed time, foreclosed the lien against the owner. The Supreme Court reversed my decision giving the mechanic's lien priority over the mortgage because the mortgagee had not been joined in the foreclosure action.

**707 P.2d 1385 (Wyo. 1985) Alexander v. Phillips Oil Co.**

I granted summary judgment in this wrongful termination case, relying upon existing law - that employment contracts were "at will" unless otherwise stated. Between my decision and the opinion in this case the Supreme Court decided several employment cases and announced that the "at will" presumption could be altered by the provisions of an employee handbook unless the handbook carried a conspicuous disclaimer. Accordingly, since this case involved such a handbook, the summary judgment was reversed and the case remanded for trial.

**705 P.2d 321 (Wyo. 1985) Cities Service Co. v. Northern Production Co., Inc.**

This was an indemnity case. A Northern Production employee was injured at work. He was prevented from bringing suit against his employer because of a bar to such suits in the worker's compensation statute. Instead, he successfully sued Cities Service, who had engaged Northern Production to do oil field work. Northern was contractually obligated to indemnify Cities Service against all claims. A statute

provided that contracts involving mining and oil and gas drilling were contrary to public policy and void to the extent that they required indemnity for the negligent acts of the indemnitee. The Supreme Court found the contract to be ambiguous and then interpreted it to intend indemnity by Northern only to the extent of Northern's negligence, but not for Cities Service negligence.

**669 P.2d 505 (Wyo. 1983) Belle Fourche Pipeline Co. v. Elmore Livestock Co.**

Appellant's pipeline ruptured, spilling oil on agricultural land. A jury awarded \$40,000 damages to the landowner for damage to the land and \$57,250 for pollution of ground water. In entering judgment I ordered the \$57,250 paid into the registry of the court to be used only for approved water pollution mediation. The Supreme Court reversed on both elements of damage. It held that the appellants, acting as private attorney general under the statute, had failed to give notice of the pollution claim to the state and the appellant before filing suit, as the statute required. It also found fault with an instruction to the jury that it should determine damages by deducting the value of the affected land after the spill from the value before the spill. It held that the correct measure of damage was the difference in value of the entire ranch before and after the spill.

**660 P.2d 377 (Wyo. 1983) Ruby Drilling Co., Inc. v. Billingsly**

Ruby met with a homeowner's association about supplying a subdivision with water from his well. Nothing came of the meeting, but one homeowner later decided to purchase water. Ruby installed a water line from his well to the homeowner's house. The line was installed within the lines on the subdivision plat designated as streets, but not formally dedicated as streets or for utility ways. Other homeowners sued, alleging trespass. In reversing a judgment for trespass the Supreme Court held that the description on the plat constituted a public easement.

**643 P.2d 932 (Wyo. 1982) Matter of Johner**

Johner was injured on the job in 1977. The workers compensation statutes provided that the district court could terminate temporary disability payments based upon medical reports. I received a report from Johner's physician indicating that his condition stabilized in May 1980 and assessing his permanent disability at 20%. I required that the temporary disability payments he received after May 1980 be set off against his permanent award. The Supreme Court held that the offset was improper.

**641 P.2d 1235 (Wyo. 1982) Meyer v. Kendig**

The appellee, who was severely injured in a mining accident alleged ordinary negligence against co-employees. Appellant moved to dismiss the complaint relying on the worker's compensation statute which barred claims against co-employees except for culpable neglect. Based upon a dissenting opinion in *Stephenson v. Mitchell*, 569 P.2d 95 (Wyo. 1974) I decided the statute violated the Wyoming Constitution. The Supreme Court reversed.

Significant cases involving federal or state constitutional issues:

**Black v. State**, discussed above - I did not write an opinion. *Reversed*, 820 P.2d 969 (Wyo. 1991).

*Mills v. Campbell County Canvassing Board*, I did not write an opinion. *Affirmed*, 707 P.2d 747 (Wyo. 1985)

*A v. XYZ* (Civil 10789) A copy of my opinion letter is attached. *Affirmed*, 641 P.2d 1222, cert. den. 459 U.S. 1021.

*Meyer v. Kendig*, discussed above - I did not write an opinion. *Reversed* at 41 P.2d 1235 (Wyo. 1982)

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

In August 2000 I was nominated (by write-in votes) as a Republican candidate for the State Legislature. Initially I accepted the nomination, but decided to withdraw prior to the general election.

In 1978 the Governor appointed me to the Wyoming Community College Commission. I served as a member of the Commission until 1980 when I was appointed to the District Court Bench.

In 1976 I ran (unsuccessfully) for School Board - Johnson County, WY

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  
Not Applicable.
2. whether you practiced alone, and if so, the addresses and dates;  
Not Applicable
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

September 1972 - June 1974	Staff Attorney Department of Justice Washington, D.C. Appellate Section Land and Natural Resources Division
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July 1974 - August 1980	Proprietor/Associate
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Omohundro and O'Brien (not partnership)  
100 South Main Street  
Buffalo, Wyoming 82834

August 1980 - August 2000

District Judge  
Sixth Judicial District  
Campbell County Courthouse

June 2001 - Present

Legal Consultant  
Kennecott Energy Company  
Post Office Box 3009  
505 South Gillette Avenue  
Gillette, WY 82717-3009

b.

1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

After graduation from law school I accepted a position with the Department of Justice in the honor graduate program. I was assigned to the appellate section of the Land and Natural Resources Division in Washington, D.C. where I did exclusively appellate work in the United States Courts of Appeals. I briefed or argued cases in the Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, Tenth and District of Columbia circuits. In addition, I prepared memoranda for the Office of the Solicitor General and drafted briefs in opposition to petitions for certiorari, which, after review and revision, were submitted to the United States Supreme Court.

The Land and Natural Resources Division was responsible for cases involving uses of the public lands, including mining, oil and gas, water rights, use permits, and environmental matters (National Environmental Policy Act, Water Pollution Control Act, Clean Air Act, etc.). The division was also responsible for condemnation litigation and cases involving federal interaction with Indian tribes. The appellate section briefed and argued appeals of Land and Natural Resources Division cases.

I left the Department of Justice in July 1974 to return to Wyoming and enter private practice with William Omohundro in Buffalo. It was a typical small town practice - real estate, business organizations, family law, civil litigation and some probate, oil and gas, mining, labor, criminal and appellate work. I remained there until appointed to the bench in August 1980.

The Sixth Judicial District, where I served, has the full range of cases that are standard fare for general jurisdiction courts. During my twenty years there, I conducted scores of jury trials and hundreds of bench trials. Those cases ranged from misdemeanors to first-degree murders and from simple divorces to major personal injury trials. I have been involved in both medical and legal malpractice cases, a large securities fraud case, and an assortment of civil rights (42 U.S.C. 1983), contract, domestic relations, employment, insurance, mining, oil and gas, parentage, property, tort, and workers compensation cases. In addition, I handled adoptions, conservatorships, guardianships, involuntary commitments, probates, review of agency

action, and appeals from lower courts. I have tried cases in Basin, Buffalo, Casper, Cheyenne, Douglas, Gillette, Jackson, Newcastle, Rawlins, Sheridan, Sundance, Thermopolis, Wheatland, and Worland.

Presently I am working as a legal consultant to Kennecott Energy Company. It has involved mostly contract negotiation and drafting.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

While I was in private practice my clients were small businesses and individuals. It was a typical small town (3,500) practice. I did not specialize. My practice involved domestic relations, contract (including uniform commercial code) negotiation and drafting, wills and estates, guardianships and conservatorships. I did a few bankruptcy cases and, aside from domestic relations cases, had very limited civil or criminal litigation. I did title work, some mining and oil and gas and I formed a labor union in Campbell County. I was also a part time Justice of the Peace.

1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

When I was with the Department of Justice we were assigned cases to brief and argue. Senior attorneys in the appellate section reviewed the briefs of junior staff attorneys, but we were not accompanied by others when the case was argued and, typically, we argued the cases we briefed. Since it takes time for cases to mature and find their way to the argument calendar I had few arguments for the first several months. Later I would average one argument in a federal appellate court every month or two.

In private practice in Buffalo I frequently appeared in court on domestic relations matters, occasionally on other civil matters and rarely on a criminal case. As justice of the peace I routinely handled small civil and criminal cases and held preliminary hearings in felony and high misdemeanor cases.

2. What percentage of these appearances was in:
  - (a) federal courts; 100% while with the Department of Justice. 0% while in private practice and on the State District Bench.
  - (b) state courts of record; 90% while in private practice.
  - (c) other courts. 10% or less was in other courts or administrative tribunals.
3. What percentage of your litigation was:
  - (a) civil; 95% in private practice, 70% as a judge
  - (b) criminal. 5% in private practice, 30 % as a judge.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate 30. Sole counsel.

5. What percentage of these trials was:  
 (a) jury; 5%  
 (b) non-jury. 95%

8. Litigation: Describe the ten most significant litigated matters, which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
1. the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Following is a partial list of case I briefed and argued while with the Department of Justice.

**Bigheart v. Pappan**, 482 F.2d 1066 (10th Cir. 1973) cert. den. 416 U.S. 937.

Bigheart, an Osage Indian, effectively disinherited his non-Indian wife, leaving her \$10 in his will. The remainder of his estate went to his children from a prior marriage. His wife sought to claim a forced share of his estate under Oklahoma statutes. However, federal law restricted inheritance from Osage Indians to the "heirs of Indian blood." Mrs. Bigheart exhausted her remedies within the Department of Interior and sought judicial review. The District Court affirmed the decision of the Secretary of the Interior. She claimed, among other things, that the federal statute violated the constitution. The case was affirmed by the Tenth Circuit, Judges Seth, Barrett and Doyle. I briefed and argued the case in the Tenth Circuit and drafted the brief in opposition to the petition for certiorari to the Supreme Court. Counsel for appellant was Shockley T. Shoemaker, Shoemaker & Briggs, Pawhuska, Oklahoma. Counsel for intervenors, the Bigheart children, was Bruce W. Gambill, Kelly & Gambill, Pawhuska, Oklahoma.

**Citizens Environmental Council v. Volpe**, 484 F.2d 870 (10th Cir. 1973), cert. den. 416 U.S. 936.

This National Environmental Policy Act case sought to halt construction of a bypass highway in Overland Park, Kansas. The District Court ruled that the environmental impact statement was adequate. The decision was affirmed by the Court of Appeals, Circuit Judges Lewis and Barrett and District Judge Smith. I briefed and argued the case for the Secretary of Transportation. Counsel for appellant was William H. Pickett, Kansas City, Missouri.

**Movement Against Destruction v. Volpe, 500 F.2d 29 (4th Cir. 1974).**

This class action sought to enjoin the construction of the "Franklin-Mulberry" corridor, a highway project in Baltimore. It was brought under the National Environmental Policy Act alleging inadequate environmental assessment. Three similar cases were combined and heard by two trial judges, sitting together. The complaint was dismissed. The District Court's decision was affirmed by the Fourth Circuit, Circuit Judges Bryan, Batzner and Widener. I briefed and argued the case for the Secretary of Transportation. Counsel for the appellant was John C. Armor, Baltimore, Md.

**Multiple Use, Inc. v. Morton, 504 F.2d 448 (9th Cir. 1974).**

This was a contested land patent application case. The Secretary of the Interior denied a patent application and determined that the mining claims were null and void because the applicant failed to meet the marketability and prudent man test - there was no market for the claimed minerals sufficient to justify the expenditure of time and effort in mining. The Secretary's action was reviewed and affirmed by the District Court. The Court of Appeals affirmed, Circuit Judges Barnes and Koelsch and District Judge Firth on the panel. I briefed the case for the Secretary of the Interior. Oral argument was scheduled after I left the Department of Justice; it was argued by Jacques Gelin, Department of Justice, Washington, D.C., retired. Counsel for appellant was Hale Tognoni, Phoenix, Arizona.

**U.S. v. 114.64 Acres, 504 F.2d 1098 (9th Cir. 1974).**

The District Court ruled that when the United States commenced a condemnation case it waived its rights under a purchase option agreement it had negotiated with the land owner and, moreover, that it was foreclosed from introducing the option as evidence of value. The Court of Appeals, Circuit Judges Duniway and Trask and District Judge Smith, reversed and remanded for trial. I briefed the case for the United States. Oral argument was scheduled after I left the Department of Justice; it was argued by John Zimmerman, Department of Justice, Washington, D.C. Counsel for the appellee was Louis F. Racine, Jr., Racine, Huntley, Herzog and Olson, Pocatello, Idaho.

**U.S. v. Zweifel, 508 F.2d 1150 (10th Cir. 1975).**

Upon the petition of the United States the district court invalidated hundreds of mining claims in nine counties in Wyoming filed by Zweifel on behalf of 267 claimants. The claims were mere "paper filings" unsupported by required staking and development work. The appellant mining claimants argued that determining the validity of mining claims was committed to the Secretary of the Interior and the United States must exhaust administrative remedies within the Department, rather than institute a quiet title action. The Circuit Court, Circuit Judges Lewis and Holloway and District Judge Christensen, held that the United States could elect either remedy. I briefed the case for the United States. Oral argument was scheduled after I left the Department of Justice; it was argued by Jacques Gelin, Department of Justice, Washington, D.C., retired. Counsel for appellant mining claimants was Clement Theodore Cooper, Washington, D.C.

In the short time I was in private practice in Buffalo, Wyoming I was not involved in significant litigation. While on the district bench I conducted hundreds of bench trials and scores of jury trials, both criminal and civil. Following is a sample:

**State of Wyoming v. Laura Rice**, Criminal No. 2459, Sixth Judicial District, Campbell County, Wyoming. Sanity Hearing 1989. Laura Rice decapitated her two children, thinking they were clones seeking to harm her; "nipping at her organs with their eyes." Her mental illness was exacerbated by the use of controlled substances. Our small community was outraged and determined to see that justice was done - an eye for an eye. Laura Rice entered pleas of not guilty, not guilty because of mental illness and not fit for trial because of mental illness. The state hospital concluded she was mentally ill, her expert concluded that she was mentally ill, most lay people who had contact with her concluded that she was mentally ill. The prosecutor did not want to appear to let her off on a technicality and thereby escape a full measure of retribution. Accordingly, a sanity hearing was conducted. It lasted all day. She had a long-standing history of mental illness, diagnosed in this state and others. No witness who had contact with Laura Rice thought she was sane within the meaning of our statute. It fell to me to decide. The legal conclusion was not difficult, but it was a test of mettle and the fallout was unpleasant. John D. Young, Esq., 3329 Sunny Meadows Court, Birmingham, AL 35242-3429 Phone (205) 995-0777 for the state. Steven Johnson, Esq., deceased, for defendant.

**Orlin Wendlandt v. Wayne Elder**, Civil No. 16748, Sixth Judicial District, Campbell County, Wyoming. Jury Trial March 1990. This case was interesting because it demonstrated the imperfections of our system and presented potential ethical issues. In a local bar, the defendant, a much younger and larger man, struck the plaintiff, causing him to fall and strike his head on an old iron radiator. He was injured thereby and brought suit alleging the intentional tort of battery. The defendant had limited assets but he did have an insurance policy with State Farm covering negligence, but excluding intentional torts. State Farm denied coverage but provided a defense with a reservation of rights. It hired an attorney to represent the defendant. Plaintiff discovered the insurance anomaly and amended to claim negligence. The case proceeded to a jury trial on the contrived negligence theory, without opposition from the defendant. When I inquired about the appearance of collusive litigation I was told that State Farm hired counsel to provide a defense for the defendant and the attorney client relationship did not include State Farm. Defendant's attorney did not resist plaintiff's tactics because a finding of negligence, rather than battery, would protect what assets the defendant owned. I concluded that, aside from a taint on judicial process, State Farm was the only potential victim and it had the resources to protect its interests. It dramatically underscores how trials depend upon the adversarial system. It is unsettling when a travesty passes for a trial. It is depressing to confess impotence to arrest the farce. It is instructive to realize the intricacy and fragility of the process. Thomas A. Fasse, Esq., Miller & Fasse, P.C., 710 North 8th West, Riverton, WY 82501 Phone (307) 856-4459 for plaintiff. Joseph E. Hallock, Esq., Stevens, Edwards & Hallock, P.C., P.O. Box 1148 Gillette, WY 82717-1148 (307) 682-1444 for defendant.

**Triton Coal v. Mobile Coal**, Civil No. 16442, Sixth Judicial District, Campbell County, Wyoming, filed May, 1988, *see 800 P.2d 505*, was an eight day jury trial involving claims of interference with a major coal contract. It was a complex case, document

intense, and involving large damage claims. Defense counsel entered the case late, but demonstrated a remarkable ability to define and refine the issues, simplify the evidence, concentrate effort and synthesize argument. Primary counsel were Alan Minier, Esq., and Tom Nicholas, Esq., Hirst and Applegate, P.O. Box 1083, Cheyenne, WY 82003-1083 Phone (307) 632-0541 for plaintiff and Joseph Kennedy, Fourth Floor, 200 West Douglas, Wichita, Kansas 67202-3084 Phone (316) 262-2671 for defendant.

Coronado Oil Company v. Darryl A. Ferguson, et al., Civil 9-90-2, Sixth Judicial District, Weston County Wyoming. This complex case went to trial to a jury in February 1993 on contract and conversion issues. The trial lasted approximately seven days and resulted in a verdict of well over one million dollars. It was clear from the verdict and surrounding facts that the jury understood the basic issues but, when it came to the complicated and intricate accounting issues it was helplessly at sea. It appeared that the jury simply adopted the plaintiff's theory of the case and returned the verdict it sought. Plaintiff clearly proved its case and was entitled to judgment, but I disagreed with the amount and was concerned that the jury was incapable or unwilling to do the intricate analysis necessary to adequately address the problems. Nevertheless, the verdict was within the range of the evidence, rational minds could possibly come to that conclusion, and there were no jury improprieties, so I let it stand. See 884 P.2d 971 Peter Bjork, Esq., Bjork, Seavy, Lindley & Danielson, P.C., 1600 Stout St # 1400, Denver, Co Phone (303) 892-1400 and David Uchner, Esq., P.O. Box 1162, Cheyenne, WY 82003-1162 Phone (307) 778-7663 for Plaintiff. Alvin M. Cohen, Esq., 1433 17th St Denver, CO 80202, Phone (303) 571-5200, Dana Eismeler, Esq., Burns, Figa & Will, P.C., 6400 S Fiddlers Green # 1030 Englewood, CO 80111 Phone (303) 796-2626, Stan Sheehan, Esq., P.O. Box 597, Newcastle, WY 82701-0597 Phone (307) 746-2239, Thomas Whitley, Esq. (deceased) for defendants.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

During my tenure as a district judge I tried to do more than just decide cases. I have worked to improve the functioning and image of the courts. My efforts are visible in Campbell County and elsewhere in the state.

I suggested (and drafted) legislation to simplify and streamline jury selection, to permit computer compilation of jury lists and to improve the pay for jurors. After the enabling legislation was enacted I worked with the Department of Information Technology to develop a computer selection program; that system is in place and available to all clerks of court in the state (and used by nearly all). The program expands the pool of prospective jurors by merging a list of registered voters in each county with a list of licensed drivers from that county. The computer randomly selects names to form the master juror list for all courts in each county.

In 1980 felons who were not sent to the penitentiary (most felons are not) were placed on probation and sometimes fined. Restitution was seldom ordered and little effort

was made to actually collect fines or restitution from probationers. Early on I decided to steer a different course, one that made probationers accountable for their misconduct:

I suggested the first split sentencing bill to the legislature, which it enacted. That law allows felons, whose crimes do not warrant prison, to be committed to the county jail for up to one year before release to probation. W.S. § 7-13-107. It can also be found on the web at <http://legisweb.state.wy.us/statutes/titles/title07/c13a01.htm>.

Prisoners I sentenced were required to work to pay fines and reimburse the state and county for court-appointed counsel. If they could not get or keep a job they were required to perform community service work. But there was uniform reluctance among law enforcement officials to run a work program because of potential liability. I suggested a bill to the legislature whereby prisoners and probationers doing public labor would be covered by worker's compensation. The bill became law and those who work are now covered in case they are injured and those who supervise have immunity. I also suggested, and the legislature passed, a statute that authorizes prisoners to work off one-half of their fines, costs and attorney fees. The work program in Campbell County is an unqualified success. Public service work encourages probationers to find paying jobs thereby giving probation officers leverage to collect restitution, fines and attorney fees. Those without paying jobs still contribute something to society.

I spearheaded the Community Corrections program in Campbell County. Probationers and prisoners nearing the end of a prison sentence are permitted to go to a half way house where they are closely monitored and required to work. I served on the Campbell County Community Corrections Board for approximately ten years - 1990 to 2000. The board contracts with a service provider to house, feed and supervise the residents of the half way house. The board ultimately decides which inmates are admitted, rejected or expelled from the program.

"Restorative justice," now much in vogue, has been a fact in the Sixth Judicial District for 20 years.

Campbell County has a sophisticated computer system for docket control, caseload statistics and other applications. I worked with the county data services office to develop a workable system and useful programs - they did the programming but I provided needs assessments, concept development and general direction. That system was in place and served us well until 1998 when, as part of a statewide standardization program, the counties in the district switched to a commercially available program.

Children in court are a special societal problem. I tried to enhance programs for children who come into contact with the juvenile courts and, to

that end, took a personal interest in the juvenile probation office, which was in its infancy when I started on the district court. In large measure my guidance and support enabled the office to mature into a viable and visible institution serving the needs of children in the community. It emphasizes personal accountability and affords careful supervision of juveniles; it arranges and supervises community service work, provides information to the court and coordinates juvenile programs. The programs are models for the entire state. On a related front, I provided impetus for an effort that eventually led to construction of a new facility for troubled youth in the community.

I envisioned and commissioned the installation of an electronic system in courtrooms, which permits court reporters to conveniently report bench conferences by the use of headphones tapped into the courtroom sound system. It insures a complete record and allows the court reporter to be unobtrusive during the trial. Other state and federal courts now use similar systems.

Judges are frequently asked to participate in moot court programs and as presenters at various seminars; I always did my part. In addition, for ten years I presented an overview of the judiciary for the Gillette Area Leadership Group, a program designed to enhance understanding of government operation, particularly state and local government, for potential civic leaders. Legislators, county commissioners, city councilmen, members of state and local boards and others have participated over the years. I have no outlines or notes.

Due largely to my interest, effort and leadership:

- The Sixth District led the state in money paid by probationers for restitution, victim fund payments and repayment of attorney fees. Indeed, for years Campbell County collected more than all other counties combined.
- In the Sixth District probation orders were enforced in a meaningful way; probationers were required to remain drug and alcohol free and make restitution to victims and the state. Misconduct or lack of cooperation was neither ignored, nor accommodated; appropriate and timely consequences were uniformly imposed.
- The Sixth District had the highest per capita child support collections.
- The Sixth District collected the most money from parents of children placed in treatment or in state institutions through the juvenile court.
- The Sixth District spent the least, per capita, for children placed by the juvenile court.
- Cases were managed and preceded to trial or settlement in a disciplined manner.

I felt it was my responsibility as a judge to be informed and prepared. To that end I went far beyond what was required in staying current in the law and procedures. I have attended over 25 weeks of classes and seminars at the National Judicial College, the National College of Juvenile and Family Court



Judges, joint federal/state programs sponsored by the Judiciary Leadership development Council, and others.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

My state judicial retirement is shared with my ex-wife.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I have been a trial judge for twenty years. The business I was involved with for nine months, Visionary Communications, Inc. is small. I do not foresee much potential for conflicts of interest except, possibly, for my stock ownership. If it becomes a recurring problem I will sell some of my stocks to consolidate my holdings or invest in areas with less potential for a conflict of interest. I have listed the stocks I own and will continue to make all necessary financial disclosures. I will adhere rigorously to the Code of Judicial Conduct in resolving conflicts of interest. Particularly, I will diligently monitor the corporate disclosures submitted by counsel with respect to the parties in every case and will recuse myself when I own stock in a corporate party or one of its affiliates.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have none and expect to have none.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report AO-10

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached statement of net worth.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have been involved in no significant political activity. I incurred minor expenses in one of my judicial retention elections (less than \$200) and I assisted another judge in writing letters, statements and radio ads in his judicial retention election. I received enough write in votes in the Republican primary election in August 2000 to be placed on the ballot for the Wyoming House of Representatives. Initially I accepted the nomination, but later withdrew. I attended a picnic in the park, but did no other campaigning. I neither solicited nor accepted contributions. I had no expenses, except for a filing fee, which I paid personally. When I ran for school board in the early 1970's I neither solicited nor accepted campaign contributions. I expended less than \$200 and did little campaigning. I have not held positions or played roles in any other political campaign. I am now a precinct committeeman, as such I have attended two or three county central committee meetings.

#### FINANCIAL STATEMENT

##### NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household..

See Attached Financial Statement with schedules.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

When I was in private practice in Buffalo, Wyoming all local attorneys were on the list to be appointed for criminal defense and in juvenile cases. If we were paid, it was at a reduced rate. That practice changed after a public defender system was put into place. I cannot remember details after all these years but I occasionally did legal work for free and participated in activities sponsored by the county and state bar associations. I pledged free legal work to Wyoming Legal Services; usually it was domestic relations.

I served on the United Way Board involved in activities other than fund raising. I have been a member of the Campbell County Health Care Foundation Board (CCHCF) and involved in its activities (except fund raising until I retired from the bench) for at least ten years. I was a member of the Rotary Club and participated in the club's humanitarian and education programs (other than fund raising), primarily youth study exchange. I spent many hours of personal time working to improve child support and juvenile services, particularly statutory revisions. See answer to question 19.

From August 2000 until June 2001 I did not practice law. Since September 2000 I have been President of the Campbell County Health Care Foundation. For some time we have been planning a campaign to raise \$1.8 million to equip a Radiation Oncology unit for the local hospital. We launched the campaign in May and so far have received pledges and donations of about \$750,000.00.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I was a member of the Gillette Rotary Club, affiliated with Rotary International, from 1981 until 1995. When I was President (1993 or 1994) I led an effort to admit women to the club. I explained to the club that if women were not admitted I would resign. Over some opposition the club voted to admit women and has many women members today.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A notice of an imminent vacancy on the Court of Appeals, Tenth Circuit appeared in the Wyoming State Bar Newsletter. All interested attorneys were invited to apply. I completed an application and submitted it to the office of Senator Craig Thomas as directed. In March or April 2001 Senator Thomas formed committee of five practicing Wyoming attorneys to serve as a selection committee. I was one of three candidates the committee recommended. In late April 2001 I was invited to an interview with White House Counsel, Alberto R. Gonzales, *Esg.*, and members of his staff. A few weeks later, I was informed that I had been tentatively selected. I completed a large packet of forms after which the FBI conducted a background investigation. I participated in a telephone interview with an individual from the Department of Justice. I understand that he also contacted attorneys who had been involved in litigation in my court. I was nominated on August 2, 2001, but I understand that all nominations have been returned to the President. I expect to be nominated again in September.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Cases and controversies are committed to the judicial branch for resolution, United States Constitution, Art III, Section 2. While the federal courts have very broad powers, they are courts of limited jurisdiction. In every case a judge should inquire and independently insure that the court has jurisdiction and that the parties have standing to litigate the issues presented. In other words, there must be a real case or controversy. In rendering decisions judges must retreat from the urge to decide more or require more than the resolution of a case demands.

Congress is charged and empowered to make policy choices for the federal government; that is not a judicial prerogative. Within constitutional limits judges must be willing to accept and implement the decisions of elected representatives. They must not, through statutory construction, foil congressional will and substitute a different sense of propriety, morality, or purpose. In a similar vein and to insure stability, judges must abide the decisions of superior courts and have healthy respect for precedent.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$227,382.39	Notes payable to banks-secured	\$0.00
U.S. Government securities-add schedule	\$2,927.00	Notes payable to banks-unsecured	\$0.00
Listed securities-add schedule	\$706,909.69	Notes payable to relatives	\$0.00
Unlisted securities-add schedule	\$49,502.98	Notes payable to others	\$0.00
Accounts and notes receivable:	\$0.00	Accounts and bills due	\$0.00
Due from relatives and friends	\$9,750.00	Unpaid income tax (Estimated Tax due 9/15/2001)	\$6,000.00
Due from others	\$14,000.00	Other unpaid income and interest	\$0.00
Doubtful	\$0.00	Real estate mortgages payable-add schedule	\$151,723.40
Real estate owned-add schedule	\$375,000.00	Chattel mortgages and other liens payable	\$0.00
Real estate mortgages receivable	\$0.00	Other debts-itemize:	\$0.00
Autos and other personal property	\$40,000.00		
Cash value-life insurance	\$0.00		
Other assets itemize:	\$0.00		
Coins - Platinum, Gold & Silver	\$4,300.00	Total liabilities	\$157,723.40
Retirement Income, State of Wyoming (Est. Present Value)	\$180,000.00	Net Worth	\$1,451,048.66
Total Assets	\$1,608,772.06	Total liabilities and net worth	\$1,608,772.06
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	\$0.00	Are any assets pledged? (Add schedule)	No
On leases or contracts	\$0.00	Are you defendant in any suits or legal actions?	No
Legal Claims	\$0.00	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	\$0.00		
Other special debt	\$0.00		

Terrence L. O'Brien

Investment Schedule

8/28/2001

Listed Securities	Amount	AS OF
Denver Airport Bonds	\$5,306.95	7/27/2001
Indiana Water Project Bonds	\$9,971.60	7/27/2001
Putnam Tax Free Fund	\$7,213.14	7/27/2001
Van Kampen Am Tax Free Hi Inc Fund	\$4,385.75	7/27/2001
Agilent Tech (A)	\$3,250.00	7/31/2001
Berkshire Hathaway B (BRKB)	\$6,900.00	7/31/2001
Black Hills Corp (BKH)	\$33,592.05	7/31/2001
Harley Davidson (HDI)	\$17,278.36	7/31/2001
Merck (MRK)	\$13,740.65	7/31/2001
Microsoft (MSFT)	\$7,300.00	7/31/2001
Motorola (MOT)	\$4,968.00	7/31/2001
Scottish Power ADR (SPI)	\$11,563.20	7/31/2001
Texas Instruments (TXN)	\$3,190.00	7/31/2001
Tricon Global Restaurants (YUM)	\$2,634.90	7/31/2001
Wells Fargo (WFC)	\$10,214.60	7/31/2001
Fidelity Contra Fund (FCNTX)	\$6,780.61	7/31/2001
Spartan Muni Income (FHIGX)	\$51,627.87	7/31/2001
Fidelity Magellan (FMAGX)	\$113,313.57	7/31/2001
Money Market	\$27,019.98	7/31/2001
MSDW Growth Fund B (GRTBX)	\$38,832.98	8/27/2001
MSDW Information Fund B (IFOBX)	\$9,273.72	8/27/2001
MSDW Mid-Cap Equity Trust B (MCFBX)	\$9,004.90	8/27/2001
MSDW Pacific Growth Fund B (TGRBX)	\$10,948.07	8/27/2001
T.RowePrice Sci & Tech Fund	\$6,155.04	8/27/2001
CMF US Govt Portfolio	\$10,887.61	7/31/2001
Agilent Tech (A)	\$1,115.79	7/31/2001
Am Movil SA DE C V ADR (AMX)	\$1,381.80	7/31/2001
Biogen (BGEN)	\$5,669.00	7/31/2001
Bristol Myers (BMY)	\$14,971.73	7/31/2001
Cisco (CSCO)	\$3,844.00	7/31/2001
Conagra (CAG)	\$63.48	7/31/2001
Delphi Automotive (DPH)	\$605.32	7/31/2001
Fedex (FDX)	\$5,791.80	7/31/2001
General Electric (GE)	\$6,525.00	7/31/2001
General Motors (GM)	\$3,648.76	7/31/2001
Gillette (G)	\$6,993.19	7/31/2001
Goodyear Tire (GT)	\$5,716.00	7/31/2001
Hewlett Packard (HWP)	\$5,120.33	7/31/2001
Intel (INTC)	\$45,545.23	7/31/2001
Microsoft (MSFT) 2	\$39,714.00	7/31/2001
MIPS Tech (MIPSB)	\$289.52	7/31/2001
Raytheon (RTNA)	\$5,862.64	7/31/2001
Telefonos De Mexico ADR (TMX)	\$2,427.60	7/31/2001
Williams Companies (WMB)	\$3,082.00	7/31/2001
Williams Communications Group (WCG)	\$162.00	7/31/2001
Warburg Pincus Japan Fund (WJSAX)	\$2,293.65	7/31/2001
WWW Internet Fund (WWIFX)	\$2,086.97	7/31/2001
IRA Money Market Acct	\$2,880.25	7/31/2001
IRA Amazon.Com (AMZN)	\$624.50	7/31/2001
IRA Imation Corp (IMN)	\$97.12	7/31/2001
IRA Micrel (MCRL)	\$6,736.00	7/31/2001

Terrence L. O'Brien

Investment Schedule

8/28/2001

IRA Microsoft (MSFT)	\$6,619.00	7/31/2001
IRA Minnesota Mining & Mfg (MMM)	\$4,475.20	7/31/2001
IRA National Semiconductor (NSM)	\$1,602.50	7/31/2001
IRA Sollectron Corp (SLR)	\$1,748.00	7/31/2001
IRA Texaco	\$5,193.75	7/31/2001
IRA TYCO Int'l (TYC)	\$11,970.00	7/31/2001
IRA Nationwide Templeton Foreign Fund	\$25,307.18	8/27/2001
IRA Dreyfus New Leaders Fund	\$27,152.85	8/27/2001
IRA Nationwide American Century Fund	\$23,199.81	8/27/2001
IRA Money Market Reserves	\$41.07	8/27/2001
Total - Listed Securities	\$705,909.69	

**Unlisted Securities**

	Amount	As Of
Transamerica Life Annuity # 1	\$12,596.42	8/28/2001
Transamerica Life Annuity # 2	\$18,411.95	8/28/2001
Transamerica Life Annuity # 3	\$18,494.61	8/28/2001
Total - Unlisted Securities	\$49,502.98	8/28/2001

**Real Estate Schedule**

	Value
Residence, Gillette, WY	\$140,000.00 8/27/2001
Vacant Lot, Gillette, WY	\$35,000.00 8/27/2001
Townhouse, Park City, UT	\$200,000.00 8/27/2001
Total	\$375,000.00

**US Securities Schedule**

	Value
HH Series Bonds (5)	\$2,500.00 5/10/2001
EE Series Bonds (@)	\$427.00 5/10/2001
Total	\$2,927.00



1.10 (a)  
v. 1/2000

# FINANCIAL DISCLOSURE REPORT

## Nomination Report

Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Reporting (Last name, first, middle initial) B. Lee, Terrence L.	2. Court or Organization Tenth Circuit	3. Date of Report / /
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge Nominee	5. Report Type (check type) X Nomination, Date / / Initial Annual Final	6. Reporting Period 01/01/2000 to 08/28/2001
7. Chambers or Office Address c/o U.S. Court of Appeals 1120 Capitol Ave., Room 2018 Cheyenne, WY 82001	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

### POSITIONS (Reporting individual only; see pp. 9-13 of instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. President	Visionary Communications, Inc.
2. Manager	Highland Signale, LLC
3. President	Campbell County Health Care Foundation

### I. AGREEMENTS (Reporting individual only; see pp. 14-15 of instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1. 08/22/00	State of Wyoming Judicial Retirement
2.	
3.	

### III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1. 1999	State of Wyoming	76,200.00
2. 2000	State of Wyoming	48,731.00
3. 2000	Visionary Communications, Inc.	22,572.00
4. 2001	Visionary Communications, Inc.	22,307.65

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Brien, Terrence L.	/ /

**REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	EXEMPT
1		
2		
3		
4		
5		
6		
7		

#### 7. GIFTS

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)	EXEMPT	
1			
2			
3			
4			

#### VI. LIABILITIES

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Chase Manhattan Mortgage Corporation	Mortgage on Park City, Utah Rental Property	N
2			
3			
4			
5			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
O'Brien, Terrence L.

Date of Report  
/ /

**I. Page 1 INVESTMENTS and TRUSTS--** income, value, transactions (includes most of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "X" after each asset except from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date Month-Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income/assets, or transactions.)									
1 Rental Property, Park City, UT 1/29/1999 - \$195,000.00	E	Rent	M	R					
2 Promissory Note from Exwife	A	Interest	J	T					
3 IRA#1 Nationwide Templeton Foreign Fund	A	Distribution	K	T					
4 IRA#1 Dreyfus New Leaders Fund	A	Distribution	K	T					
5 IRA #1 Nationwide American Century Ultra	A	Distribution	K	T					
6 IRA #1 Dreyfus Money Market Reserves	A	Distribution	J	T					
IRA#2 AMZN	A	Dividend	J	T					
8 IRA#2 IBM	A	Dividend	J	T					
9 IRA #2 MCEL	A	Dividend	J	T					
10 IRA#2 MSFT	A	Dividend	J	T					
11 IRA #2 NSM	A	Dividend	J	T					
12 IRA #2 NSM	A	Dividend	J	T					
13 IRA #2 SLR	A	Dividend	J	T					
14 IRA #2 TX	A	Dividend	J	T					
15 IRA#2 TYC	A	Dividend	J	T					
16 Building Lot in Gillette, WY \$34,500.00 Oct 5, 1994	A	None	K	R					
17 A	A	Dividend	J	T					
1 Info/Gain Codes: A=\$1,000 or less N,B,I,D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D5) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$50,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

NANCIAL DISCLOSURE REPORT	Name of Person Reporting O'Brien, Terrence L.	Date of Report / /
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

**II. Page 2 INVESTMENTS and TRUSTS -- Income, value, transactions**

A. Description of Assets (including trust assets)  <i>Place "QQ" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 AMX	A	Dividend	J	T					
19 BGEN	A	Dividend	J	T					
20 BMY	A	Dividend	J	T					
21 CSCO	A	Dividend	J	T					
22 CAG	A	Dividend	J	T					
23 DPH	A	Dividend	J	T					
FDX	A	Dividend	J	T					
25 GE	A	Dividend	J	T					
26 GM	A	Dividend	J	T					
27 G	A	Dividend	J	T					
28 GT	A	Dividend	J	T					
29 HWP	A	Dividend	J	T					
30 INTC	A	Dividend	K	T					
31 MSFT	A	Dividend	K	T					
32 MIPSB	A	Dividend	J	T					
33 RTNA	A	Dividend	J	T					
34 TMX	A	Dividend	J	T					

1 Income/Gain Codes: A=\$1,000 or less or B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting O'Brien, Terrence L.		Date of Report / /	
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Include those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure: (2) Date: Month Day (J-9) (3) Value: Code (A-I) (4) Gain: Code (A-I) (5) Identity of buyer/seller (if private transaction)				
NONE (No reportable transactions, or transactions.)					
35 IBM	A	Dividend	J	T	
36 MDSX	A	Dividend	J	T	
37 MDCFX	A	Dividend	J	T	
38 CMFUS	A	Interest	J	T	
39 FASGX	A	Dividend	J	T	
40 Morgan Stanley Growth Fund B	D	Distribut- ion	K	T	
Morgan Stanley Information Fund B	C	Dividend	J	T	
42 Morgan Stanley Mid-Cap Equity Trust	A	Distribut- ion	J	T	
41 Morgan Stanley Pacific Growth Fund B	A	Distribut- ion	J	T	
44 A (Fidelity)	A	Dividend	J	T	
45 MSERB	A	Dividend	J	T	
46 BPO	A	Dividend	K	T	
47 MDI	A	Dividend	K	T	
48 MKK	A	Dividend	J	T	
49 MSFT (Fidelity)	A	Dividend	J	T	
50 HQT	A	Dividend	J	T	
51 SFI	A	Dividend	J	T	
1 Incl/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 B1, D4 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I=\$5,000,001 or more 2 Val Codes: I=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 Q=\$5,000,001-\$25,000,000 R=\$25,000,001-\$50,000,000 S=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C1) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting O'Brien, Terrence L.				Date of Report / /			
II. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>									
A. Description of Assets (including trust assets)  <i>Place "OO" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
					(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
NONE (No reportable income, assets, or transactions.)									
52 TXM	A	Dividend	J	T					
53 YUM	A	Dividend	J	T					
54 WFC	A	Dividend	J	T					
55 PCNTX	A	Dividend	J	T					
56 FHGX	A	Dividend	L	T					
57 PMAGX	A	Dividend	M	T					
PTEXX	A	Interest	K						
59 Denver Airport Rev Bonds	A	Interest	J	T					
60 Indiana State Def Fin auth Wtr Fac Am Water Project Bonds	A	Interest	J	T					
61 FIXAR	A	Interest	J	T					
62 VMOXH	A	Interest	J	T					
63 R D Jones Cash & Money Mkt	A	Interest	J	T					
64 PFL Annuity #1	A	Interest	J	T					
65 PFL Annuity #2	A	Interest	K	T					
66 PFL Annuity #3	A	Interest	K	T					
67 Checking Bank #1	A	Interest	J	T					
68 Savings Bank #1	A	Interest	M	T					
1 Net Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 B1, D4 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting O'Brien, Terrence L.				Date of Report / /			
<b>VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)</small>									
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 Checking Bank 2	A	Interest	J	T					
70 U S Coins	A	None	J	T					
71 U.S. Bonds	A	Interest	J	T					
72									
73									
74									
75									
76									
77									
78									
79									
80									
81									
82									
83									
84									
85									
<b>1</b> Inc/Gain Codes: A=\$1,000 or less 1. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Brien, Terrence L.	/ /

### III. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Brien, Terrence L.	/ /

**SECTION HEADING.** (Indicate part of report.)  
Information continued from Parts I through VI, inclusive.

#### PART 1. POSITIONS (cont'd.)

Position Name of Organization/Entity

1 Judge District Court, Sixth Judicial District

5 Member Oak Rim Ranch, LLC

5 Consultant/Attorney Kennecott Energy Company

#### PART 3. NON-INVESTMENT INCOME (cont'd.)

Year	Date	Source and Type	Gross Income
------	------	-----------------	--------------

5	2001	State of Wyoming - Judicial Retirement	11,653.81
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6	2000	State of Wyoming - Judicial Retirement	7,302.65
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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	O'Brien, Terrence L.	/ /

### X. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

*Terrence L. O'Brien*

Date

*August 28, 2001*

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).



Chairman LEAHY. What I am going to do is stand in recess for 2 minutes while we set the table back up, because following our normal practice, we will have the district court judge nominees as a panel. We will stand in recess for 2 minutes.

[Recess at 10:54 to 11:00 a.m.]

Chairman LEAHY. I wonder if all three of you could please stand and raise your right hand. Lance Africk, Paul Cassell, and Legrome Davis, do you swear the testimony you are about to give before this committee shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge AFRICK. I do.

Mr. CASSELL. I do.

Judge DAVIS. I do.

Chairman LEAHY. Let the record indicate that all three nominees took the oath, and I want to start with Judge Africk. Do you have members of your family here or friends that you wish to introduce? Again, for the Africk family history.

**STATEMENT OF LANCE AFRICK, NOMINEE TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Judge AFRICK. Yes, sir, and I would like to thank you and the members of the committee for holding this hearing, Senator.

I am proud to present to you my son, Max Africk; my wife, Diane Africk; my son, William Africk; and my mother, Evelyn Africk; and my father, Jack Africk.

[The biographical information of Judge Africk follows.]

**QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE**

1. **Name:** Full name (include any former names used).  
  
Full legal name: Lance Michael Africk
2. **Position:** State the position for which you have been nominated.  
  
Position: United States District Court Judge  
in the Eastern District of Louisiana
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
501 Magazine Street, Suite B335  
New Orleans, Louisiana 70130  
(504) 589-7605
4. **Birthplace:** State date and place of birth.  
  
Born December 1, 1951, New York, New York
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Married to Diane Katz Africk, M.D., (maiden name- Diane Katz) who is a pediatric neurologist employed by Tulane Medical School, 1415 Tulane Avenue, 7th Floor, New Orleans, Louisiana 70112.  
  
We have four dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  

<u>Name of School</u>	<u>Address</u>	<u>From</u>	<u>To</u>	<u>Degree</u>
Univ. Of North Carolina School of Law	Chapel Hill, North Carolina	1973	1975	Juris Doctor in 1975

<u>Name of School</u>	<u>Address</u>	<u>From</u>	<u>To</u>	<u>Degree</u>
Univ. Of North Carolina	Chapel Hill, North Carolina	1969	1973	Bachelor of Arts and Laws in 1973

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

<u>From</u>	<u>To</u>	<u>Name of Employer</u>	<u>Type of Work</u>
April, 1990	Present	U.S. District Court Chief Judge Ginger Berrigan 500 Camp Street New Orleans, LA 70130	U.S. Magistrate Judge responsible for Civil and Criminal Matters
1986 (approx.)	Present	University of New Orleans Paralegal Institute 226 Carondelet Street Third Floor New Orleans, LA 70130	Instructor of a course in federal criminal and civil procedure and selected topics in criminal law
Aug., 1982	April, 1990	U. S. Department of Justice, U. S. Attorney's Office, Hale Boggs Federal Bldg 501 Magazine Street New Orleans, Louisiana	Assistant U.S. Attorney, Chief Criminal Division
March, 1981	Aug., 1982	McDermott, Inc., 1450 Poydras Street New Orleans, LA 70112	Lawyer, Civil Work
Oct., 1980	March, 1981	Kierr, Gainsburgh, Benjamin, Fallon & Lewis (now Gainsburgh, Benjamin, David, Meunier & Warshauer, 2800 Energy Centre 1100 Poydras Street New Orleans, LA 70163	Associate, Civil Work

May, 1977	Oct., 1980	Orleans Parish District Attorney's Office, 619 S. White Street New Orleans, LA 70112	Director, Career Criminal Bureau
June, 1976	May, 1977	Normann & Normann, New Orleans, Louisiana (firm no longer in existence)	Associate, Civil Work
June, 1975	June, 1976	Hon. James Gulotta, Judge, La. 4th Circuit Court of Appeal 4539 Bancroft Drive New Orleans, LA 70122 (Judge Gulotta is now retired.)	Law Clerk
Summer, 1974		Kierr, Gainsburgh, Benjamin, Fallon and Lewis (now Gainsburgh, Benjamin, David, Meunier and Warshauser) 2800 Energy Centre 1100 Poydras Street New Orleans, LA 70163	Law Clerk
Summer, 1973		Same as above	Law Clerk
Summer, 1972		AAA Coffee Co. (no longer in existence) Greensboro, North Carolina	Salesman
Summer, 1971		AAA Coffee Co. (no longer in existence) Greensboro, North Carolina	Salesman
Summer, 1970		R. J. Reynolds Tobacco Co. 401 N. Main Street Winston Salem, North Carolina 27102	Factory worker

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.  
None
9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
  - a) Order of Barristers (National Moot Court Honor Society)  
- inducted in 1974;
  - b) Thomas More Inn of Court - Master Barrister, 1991.
10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.
  - a) Louisiana State Bar Association - member since 1975;
  - b) Federal Bar Association, Eastern District of Louisiana - Board of Directors since 1996;
  - c) Louisiana State Bar Association, Federal Court Bench Bar Liaison Committee - member since 1996;
  - d) New Orleans Bar Association Criminal Law Committee - 1992-1993;
  - e) Civil Justice Reform Act Alternative Dispute Resolution Committee for the Eastern District of Louisiana - 1994;
  - f) U.S. Magistrate Judges Association - member since 1990.
11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

<u>Court</u>	<u>Admission Date</u>	<u>Lapse of Membership</u>
Louisiana Supreme Court	October, 1975	No
U.S. District Court, Eastern District of Louisiana	July, 1976	No
U. S. Fifth Circuit Court of Appeals	September, 1982	No

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

1. Louisiana State Bar Association - member since 1975
2. Federal Bar Association, Eastern District of Louisiana - Board of Directors since 1996
3. Thomas More Inn of Court - Master Barrister, 1991 through 1999 (est.)
4. Order of Barristers - (National Moot Court Honor Society) - inducted in 1974
5. Louisiana Bar Association, Federal Court Bench Bar Liaison Committee - member since 1996
6. New Orleans Bar Association Criminal Law Committee - 1992-1993
7. Civil Justice Reform Act Alternative Dispute Resolution Committee for the Eastern District of Louisiana - 1994
8. March of Dimes Birth Defects Foundation, New Orleans Division, Board of Directors - 1993

9. Carrollton Booster Club - 1986 (est.) - 2000
10. Newman School Dad's Club - Board member - 1996-1997
11. Friends of the Audubon Zoo and Aquarium - 1986 (est.) - present
12. New Orleans Alcohol and Beverage Control Board - member 1981-1982
13. Krewe of Hermes Carnival Club - member since May, 2000
14. Sugar Bowl Committee - member since September, 1998
15. Federalist Society - member since April, 2001
16. City Energy Club - member since September, 1999
17. U.S. Magistrate Judges Association - member since 1990

None of the organizations listed above discriminate based on race, sex, or religion. I do not know whether the Krewe of Hermes, an old Mardi Gras organization, and the Sugar Bowl previously discriminated on any basis. They have had an open membership policy since I joined.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

	<u>Title</u>	<u>Publisher</u>	<u>Date</u>	<u>Capacity</u>
a)	Prosecutorial Discretion: Striking a Balance	Louisiana Bar Journal	June, 1988	Author
b)	An Introduction to Federal Grand Jury Practice	Louisiana Bar Journal	April, 1989	Author

- |    |  |  |              |   |
|----|--|--|--------------|---|
| c) | The Role of Counsel and the Court During Voir Dire Examination | Federal Bar Association, New Orleans Chapter | Spring, 1993 | Author  |
| d) | Criminal Law and Procedure                                     | Loyola University Law School Law Review      | 1989         | Co-author with Joseph Giarrusso Jr., Esquire. I authored sections concerned with the Fourth and Fifth Amendments and sentencing guidelines. |
| e) | Moore's Federal Practice Vols. 24-28, 3rd Edition (1997)       | Matthew Bender and Inc.                      | 1999         | Reviewer (reviewed chapters 604, 609, 610, 611, 633, 646 and 650 for accuracy).   |

See Attachment A in globo. I know of no speeches I have given on issues involving constitutional law or legal policy. My lectures have related to alternative dispute resolution and the Federal Rules of Civil and Criminal Procedure. I do not have copies of such speeches. I know of no press reports with respect to any lectures.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent. My last physical exam was in January, 2002, and it was normal.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;

If any of the opinions or rulings listed were in state court or were not officially reported,



please provide copies of the opinions.

1. St. James Stevedoring Co., Inc., et al v. Femco Machine Company, Civil Action No. 96-3168 "K" (3), 173 F.R.D. 431 (E.D. La. 1997). In the Eastern District of Louisiana, we often see litigation involving cargo disputes. The defendant in this case sought to have the plaintiffs produce a marine survey report prepared during a damage investigation. This case presented issues involving a claim of work product privilege and the case has been cited by other courts.
2. Nadelle R. Grantham v. Dr. Randy Moffett, et al, Civil Action No. 93-4007 "N" (3) 1996 WL 3750 (E.D. La. January 3, 1996). An interesting jury trial involving a deaf university student who wanted to teach reading to young children. Following a jury verdict for the plaintiff, I awarded attorney fees.
3. Elijah Murray v. Richard Stalder, Warden, Civil Action No. 92-1209 "H" (3) (E.D. La. 1992). Petitioner alleged that Louisiana's purse snatching statute was unconstitutionally vague and that the term "snatching" was not sufficiently clear to an average person. Petitioner also claimed that the purse snatching statute was overbroad. The opinion focused on the constitutionality of the Louisiana purse snatching statute.
4. United States of America v. Quendar Valentin Pena-Castillos, Criminal Action No. 96-237 "F" (3) (E.D. La. 1996). This case presented a sentencing guideline issue involving an alien who pled guilty to being unlawfully in the United States. The defendant's sentence was enhanced because he had been previously deported after being convicted of an aggravated felony.
5. Eugene Frazier v. Burl Cain, Warden, Civil Action No. 97-735 "D" (6) (E.D. La. 1997). Petitioner was convicted of distribution of heroin. One of the issues in this federal habeas corpus application related to the constitutionality of Louisiana's ad hoc drug court.
6. National Labor Relations Board v. Concordia Electric Cooperative, Inc., No. 95-60404 (5th Cir.1999). Following a decision by the U.S. Fifth Circuit Court of Appeals that the National Labor

Relations Board had properly found Concordia Electric Cooperative in violation of the National Labor Relations Act, a dispute arose and the NLRB moved for primary adjudication and civil contempt against Concordia. I was appointed a special master in this labor dispute by the U.S. Fifth Circuit Court of Appeals. This case presented interesting issues regarding ratification of a collective bargaining agreement and civil contempt.

7. Rickey Warner v. Burl Cain, Warden, Civil Action No. 95-2319 "N" (3) (E.D. La. 1995). This case was a federal habeas corpus application involving a procedural default. During trial, petitioner's counsel failed to object to some remarks by the trial judge as well as a jury charge. Respect for the state court's decision is grounded in concerns for comity.
8. Richard Lee v. John P. Whitley, Warden, Civil Action No. 93-2423 "M" (3) (E.D. La. 1993). Petitioner pled guilty to possession of stolen property and he was sentenced as a multiple offender. Federal habeas corpus application relating to the constitutionality of a guilty plea, i.e., the trial judge did not specifically advise petitioner of his right to confront the witnesses against him, and a multiple bill (recidivist offender) hearing.
9. Kenneth E. McCullough v. John P. Whitley, Warden, Civil Action No. 93-1359 "A" (3) (E.D. La. 1993). Petitioner, convicted of first degree murder, claimed that he was mentally incompetent during trial. This federal habeas corpus application involved a discussion of mental competency issues.
10. In Re: Kaiser Aluminum, et al Civil Action No. 99-2641 "J" (3) 1999 WL 717513 (E.D.L.A. 1999). Following a plant explosion, the U.S. Department of Labor conducted hearings with respect to the explosion. The plant owner attempted to shield certain documents from discovery, arguing that disclosure would deter the company from conducting the equivalent of pre-accident safety reviews. I rejected a claim that the work product privilege and a self-critical analysis privilege applied.

See Attachment B. Note that some of the above-mentioned

opinions were written for the U.S. District Judge's signature and adopted by those judges.

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court;

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

To the best of my knowledge, I have never been directly reversed by the U. S. Fifth Circuit Court of Appeals in a case where the consent of the parties was obtained pursuant to 28 USC § 636(c). However, the following list represents cases reversed or remanded by the U. S. Fifth Circuit Court of Appeals following an affirmance of my report and recommendation by the U. S. District Court or appeal of an order and reasons issued by the U. S. District Court, but prepared by the undersigned.

- a. Raymond Tucker v. Ed Day, Warden, 969 F.2d 155 (5th Cir. 1992); Issue regarding right to effective assistance of counsel at a resentencing hearing.
- b. Hudson v. Hughes, affirmed in part, 98 F.3d 868 (5th Cir. 1996), remanded in Hudson v. Hughes, No. 96-30964 (5th Cir. September 20, 1996) (unpublished), and severed in Hudson v. Hughes, No. 95-30874 (5th Cir. September 18, 1996) (unpublished); reversed on 11th amendment immunity, Hudson v. City of New Orleans 174 F.3d 677 (5th Cir. 1999), cert denied, Connick v. Hudson, 528 US 1004, 210 S.Ct. 498, 145 L.Ed.2d. 385 (1999). Issue related to whether the Orleans Parish District Attorney's office was an arm of the State and immune from suit under the Eleventh Amendment.
- c. Marts v. Hines, 117 F.3d 1504 (5th Cir. 1997) (en banc). Issue was whether a dismissal of in forma pauperis cases as frivolous or malicious should be with or without prejudice.
- d. In the following cases, my decisions were reversed by the U.S. District Court. Although the U.S. District Court's opinion may not be classified as an "appellate opinion", I attach it in the event it is responsive to this

request.

- 1) Clyde Charles v. Jerry J. Larpenter, et al, Civil Action No. 98-2006 "C" (3) (E.D.La. 1998) Issue was whether a prisoner who filed a complaint pursuant to 42 USC §1983 had a right to DNA testing of evidence.
- 2) Mary H. Davillier v. State, 1997 WL 276091, Civil Action No. 96-4169 "N" (3) (E.D. La. 1997) Issue was whether a supervisor could be named a party defendant in a Title VII case.

See Attachment C in globo. There may be other opinions of which I am unaware which resulted in the U. S. District Court's judgment being reversed or remanded, but I have no recollection of the same.

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Elijah Murray v. Richard Stalder, Warden, Civil Action No. 92-1209 "H" (3) (E.D. La. 1992). (See attachment B and summary of 16 (a) (3) set forth above.)

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

As noted previously, I was employed as an Orleans Parish Assistant District Attorney (1977-1980) where I served as Director of the Career Criminal Bureau. The Honorable Harry Connick was the Orleans Parish District Attorney who hired me.

In 1981, I was appointed by a member of the New Orleans City Council, Joseph Giarrusso, Sr., to a one-year term on the New Orleans Alcohol and Beverage Control Board. As a board member, I participated in evidentiary hearings and I voted for a disposition with respect to alleged violations of Orleans Parish liquor laws by bars, restaurants, etc.

As an Assistant United States Attorney (1982-1990), I served as Chief of the Criminal Division. I was hired by former U.S. Attorney John Volz.

I have never been a candidate for elective public office. I have never been nominated for an office for which I was not confirmed.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I may have assisted in handing out leaflets for candidate(s) running for elective office and supported by the District Attorney. I cannot remember the names of any candidates and my role was minimal.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

<u>FROM</u>	<u>TO</u>	<u>ENTITY</u>	<u>ADDRESS</u>	<u>TYPE OF WORK</u>
June 1975	June 1976	Hon. James Gulotta, Judge La. 4th Circuit Court of Appeal. (Judge Gulotta is now retired.)	4539 Bancroft Dr. New Orleans, LA 70122	Law Clerk

- (2) whether you practiced alone, and if so, the addresses and dates;

N/A

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

FROM	TO	ENTITY	ADDRESS	TYPE OF WORK
June 1976	May 1977	Normann & Normann, New Orleans, Louisiana (firm no longer in existence)	David Normann, Esq., Loyola Univ. Law School 7214 St. Charles Ave., New Orleans, La. 70118	Associate, Civil Work
May 1977	Oct. 1980	Orleans Parish District Attorney's Office, New Orleans, Louisiana	619 S. White St. New Orleans, La. 70119	Director, Career Criminal Bureau
Oct. 1980	Mar. 1981	Kierr, Gainsburgh, Benjamin, Fallon & Lewis (now Gainsburgh, Benjamin, David, Meunier & Warshauer) New Orleans, Louisiana	2800 Energy Centre, 1100 Poydras St. New Orleans, La. 70163	Associate, Civil Work
Mar. 1981	Aug. 1982	McDermott, Inc., New Orleans, Louisiana	1450 Poydras St. New Orleans, La. 70112	Lawyer, Civil Work
Aug. 1982	Apr. 1990	U.S. Department of Justice, U.S. Attorney's Office, New Orleans, Louisiana	501 Magazine St. New Orleans, La. 70130	Assistant U.S. Attorney, Chief Criminal Division
Apr. 1990	Present	U.S. Magistrate Judge, New Orleans, Louisiana	501 Magazine St. New Orleans, La. 70130	Civil and Criminal

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

My practice at the Orleans Parish District Attorney's Office and U. S. Attorney's Office was limited to the practice of criminal law. The remainder of my legal career, prior to becoming a U. S. Magistrate Judge, was confined to civil matters. These civil matters included personal injury claims, contract negotiations, and anti-trust related matters. As a U.S. Magistrate Judge, I preside over civil and criminal matters.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As a state and federal prosecutor, my clients were the State of Louisiana and the United States of America. I developed an expertise in narcotics and public corruption cases. In civil practice, I represented both plaintiffs and defendants in

personal injury actions. While at McDermott, Inc., I represented the company's respective divisions and specialized in contract law and anti-trust related discovery issues.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

At the Orleans Parish District Attorney's Office and U.S. Attorney's Office, I regularly appeared in court. I rarely appeared in court during my employment with the two civil law firms for which I worked and McDermott, Inc.

- (2) Indicate the percentage of these appearances in

(A)	federal courts -	75% (est.)
(B)	state courts of record -	25% (est.)
(C)	other courts -	None

At the U. S. Attorney's Office, 100% of my appearances were in federal court. At the Orleans Parish District Attorney's Office, 100% of my appearances were in state court. At the two civil law firms that employed me, I would estimate that 80% to 90% of my appearances were in federal court and that the remaining appearances were in state court. At McDermott, Inc., I did not appear in court.

- (3) Indicate the percentage of these appearances in:

(A)	civil proceedings -	5% (est.)
(B)	criminal proceedings -	95% (est.)

At the U. S. Attorney's Office and Orleans Parish District Attorney's Office, 100% of my litigation was criminal. At my other employers, 99% of my litigation was civil. I may have handled a very limited number of minor criminal/traffic cases as a civil practitioner.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that following my judicial clerkship and continuing through the end of my employment at the U. S. Attorney's Office, I tried approximately forty cases to verdict or judgment. I would further estimate that I served

as chief counsel in approximately half of these cases and as associate or co-counsel in the other half.

(5) Indicate the percentage of these trials that were decided by a jury - 95%(est.)

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in private practice at Kierr, Gainsburgh, Benjamin, Fallon & Lewis, I did a very limited amount of pro bono work. I cannot remember the names of any such clients.

19. Litigation: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1) CASE NAME:

USA v. Anthony Vesich, Jr.;  
Criminal Docket No. 82-452 "A"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: Daniel Markey, Jr., Esquire,  
(now deceased)



5559 Canal Street, New Orleans, Louisiana 70124,

NATURE OF MY PARTICIPATION: Co-Counsel with Hon. Ronald A. Fonseca, former U. S. Magistrate Judge, 4404 Dreyfous Street, Metairie, La. 70006, (504) 454-1238

JUDGE: The Honorable Charles Schwartz, Jr.

TRIAL DATES: February 28, 1983 through March 3, 1983.

FINAL DISPOSITION: Guilty of obstruction of justice and making false declarations before a federal grand jury.

SUMMARY AND SIGNIFICANCE OF CASE: Mr. Vesich, a well-known New Orleans attorney, former Orleans Parish Civil District Court Commissioner, and former State Representative, represented a cooperating individual (C/I) in a criminal case before the Honorable Charles Ward of the Orleans Parish Criminal District Court. During his representation of the C/I, Mr. Vesich told the C/I that he could have the criminal case "fixed" for a specified amount of money. The C/I agreed and the case was eventually dismissed. However, the case was not dismissed because of a "fix", but because of an unlawful search and seizure by the police. When the C/I began cooperating with the Government, he told the Government of his conversation with Mr. Vesich. A tape recording of Mr. Vesich was eventually made which corroborated the C/I. During taped conversations, the defendant, upon learning that the C/I was to be a federal grand jury witness, told the C/I to lie before the federal grand jury about the identity of his narcotics sources. Mr. Vesich, when invited to testify before the federal grand jury, perjured himself.

The grand jury is an important tool in the Government's war on drugs and its attempt to discover sources of illegal narcotics. The outcome of this case hopefully discouraged other officers of the court who might have been inclined to suggest to their clients that they could, with impunity, be untruthful before the federal grand jury.

FEDERAL REPORTER CITE: 558 F.Supp. 1192 (E.D. La.

1983), aff'd., 724 F.2d 451 (5th Cir. 1984), reh'g. denied, 726 F.2d 168 (5th Cir. 1984).

(2) CASE NAME:

USA v. Gunther Schaumburg;  
Criminal Docket No. 85-250 "G"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: Robert Barnard, Esquire,  
Assistant Federal Public Defender, 501 Magazine  
Street, Room 318, New Orleans, Louisiana 70130,  
(504) 589-2468.

NATURE OF MY PARTICIPATION: Co-counsel with Asst.  
U. S. Attorney Harry W. McSherry, Jr., 501 Magazine  
St., New Orleans, La. 70130, (504) 680-3012

JUDGE: The Honorable Morey L. Sear

TRIAL DATES: October 22, 1985 through October 31,  
1985.

FINAL DISPOSITION: Guilty of violation of the Hobbs  
Act.

SUMMARY AND SIGNIFICANCE OF CASE: Mr. Schaumburg  
was an engineer employed by St. Tammany Parish who  
was extorting a local construction company. The  
defendant demanded that the company pay him in  
order to get its work approved. The Government  
hoped that this case deterred other parish  
employees from engaging in the same type of  
conduct. The case also helped establish an FBI  
presence in St. Tammany Parish.

FEDERAL REPORTER CITE: Not reported.

(3) CASE NAME:

USA v. Warren Murphy, Jr.;  
Criminal Docket No. 89-007 "L"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: John Craft, Esquire, Assistant  
Federal Public Defender, 501 Magazine Street, Room  
318, New Orleans, La. 70130, (504) 589-2468.

NATURE OF MY PARTICIPATION: Co-counsel with Asst.  
U. S. Attorney Harry W. McSherry, Jr., 501 Magazine

St., New Orleans, La. 70130, (504) 680-3012

JUDGE: The Honorable Veronica D. Wicker (deceased)

TRIAL DATES: February 27, 1989 through March 2, 1989.

FINAL DISPOSITION: Guilty of kidnapping, assault with intent to commit murder, and assault with intent to do bodily harm.

SUMMARY AND SIGNIFICANCE OF CASE: In December, 1988, Mr. Murphy, a postal worker assigned to the main post office in New Orleans, Louisiana, kidnapped his girlfriend who was a co-worker at the U.S. Post office. During the course of the kidnapping, defendant also shot three other co-workers and two FBI agents. The defendant eventually surrendered to Superintendent Woodfork of the New Orleans Police Department. This case was significant because of the widespread publicity it attracted, seriousness of the injuries inflicted, disruption of governmental function, and the effect the case had on improving U. S. Post Office security.

FEDERAL REPORTER CITE: Not reported.

(4) CASE NAME:

USA v. Myles Washington;  
Criminal Docket No. 85-264 "I"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: Philip O'Neill, Esquire, 929 Fourth Street, Gretna, La. 70054, (504) 361-1682

NATURE OF MY PARTICIPATION: Co-counsel with Asst. U. S. Attorney Fred P. Harper, Jr., 501 Magazine St., New Orleans, La., (504) 680-3066

JUDGE: The Honorable Henry A. Mentz, Jr.

TRIAL DATES: September 23, 1985 through September 25, 1985.

FINAL DISPOSITION: Guilty of violations of the Federal Controlled Substances Act

SUMMARY AND SIGNIFICANCE OF THE CASE: This defendant was a significant and well-known heroin distributor in the Orleans Parish area. As a result of wiretap information and other undercover activity, the Drug Enforcement Administration was able to make undercover buys from the defendant in the Fischer Housing Project. This defendant's conviction had a short term effect on the narcotics activity in that area of Orleans Parish.

(5) CASE NAME:

USA v. Avis Chunn;  
Criminal Docket No. 81-371 "H"  
U.S. District Court, Eastern District of Louisiana

DEFENSE COUNSEL: Hon. Paul Bonin, 829 Baronne Street, New Orleans, La. 70113, (504) 581-9322

NATURE OF MY PARTICIPATION: Chief counsel with Asst. U. S. Attorney Peter Strasser, 501 Magazine St., New Orleans, La., (504) 680-3073

JUDGE: The Honorable Adrian G. Duplantier

TRIAL DATES: October 14, 1986

FINAL DISPOSITION: Guilty of removal of property to prevent a seizure.

SUMMARY AND SIGNIFICANCE OF CASE: Avis Chunn was employed by St. Bernard Parish as the supervisor of the road maintenance department. In his supervisory capacity, Mr. Chunn became involved in a kickback scheme involving elected and non-elected St. Bernard Parish officials. When the FBI executed a search warrant at St. Bernard Parish government offices, Mr. Chunn attempted to hide evidence from the FBI and he was convicted as a result of his conduct. This case was significant in that Mr. Chunn was the first St. Bernard employee of significance convicted at trial. Several other non-elected and elected St. Bernard Parish officials were convicted and St. Bernard changed many of its internal practices as a result of the facts revealed during this major investigation.

FEDERAL REPORTER CITE: Not reported.

(6) CASE NAME:

USA v. Louis Castro, et al;  
Criminal Docket No. 88-371"H"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEYS: Frank Sloan, Esquire, 148 Crepeyrtle Road, Covington, La. 70433, (504) 893-4058; Arthur Huttoe, Esquire, (deceased according to Florida Bar Association) Last known address was 1441 N.W. Northriver Drive, Miami, Florida 33125; Richard Kohnke, Esquire, 2917 Magazine Street, New Orleans, La. 70115, (504) 899-6864.

NATURE OF MY PARTICIPATION: Chief counsel with former Asst. U. S. Attorney Walter Becker, #1 Canal Place, 365 Canal Street, Suite 2300, New Orleans, La. 70130, (504) 561-6567.

JUDGE: The Honorable Adrian G. Duplantier

TRIAL DATES: August 8, 1988 through August 9, 1988.

FINAL DISPOSITION: Guilty of violation of the Federal Controlled Substances Act.

SUMMARY AND SIGNIFICANCE OF CASE: At the time, this case involved the largest vessel seizure of cocaine in the history of the State of Louisiana. The main defendant, Louis Castro, was on a federal appeal bond for a major drug trafficking crime at the time of his arrest. Castro had major narcotics contacts which were uncovered during the course of this investigation. The Drug Enforcement Administration and U.S. Customs were able to obtain significant intelligence information.

FEDERAL REPORTER CITE: 874 F.2d 230 (5th Cir.1989)

(7) CASE NAME:

USA v. Herman Neil Young;  
Criminal Docket No. 84-113 "A"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: Ralph Whalen, Esquire, 1100 Poydras Street, New Orleans, La. 70130, (504) 525-1600.

NATURE OF PARTICIPATION: Co-counsel with Asst. U. S. Attorney Peter Strasser, 501 Magazine St., New Orleans, La. 70130, (504) 680-3073

JUDGE: The Honorable Charles Schwartz, Jr.

TRIAL DATES: July 9, 1984 through July 11, 1984.

FINAL DISPOSITION: Guilty as charged of making false declarations before the grand jury, knowingly possessing a false identification document with intent to defraud the United States, and selling false documentary evidence of U. S. citizenship.

SUMMARY AND SIGNIFICANCE OF CASE: Mr. Young was an attorney who became involved in a scheme to supply a client with fraudulent and false immigration documents. Through consensual monitorings, we were able to gather sufficient evidence to convict the defendant. Defendant also perjured himself before the grand jury. The U. S. Immigration and Naturalization Service considered this case significant because of the government's interest in maintaining the integrity of the immigration process.

FEDERAL REPORTER CITE: Not reported.

(8) CASE NAME:

USA v. Jack Ellis and Gloria Ellis;  
Criminal Docket No. 87-365 "C"  
U.S. District Court, Eastern District of Louisiana

DEFENSE ATTORNEY: James Looney, Esquire, P.O. Box 3340, Covington, La. 70434, (504) 892-1707; Francis King, Jr., Esquire, 824 Arabella Street, New Orleans, LA 70115, (504) 891-9107.

NATURE OF MY PARTICIPATION: Co-counsel with Joseph I. Giarrusso, Jr., Esquire, McGlinchey, Stafford, 643 Magazine St., New Orleans, La. 70130, (504) 586-1200

JUDGE: The Honorable Robert F. Collins (resigned after criminal conviction)

TRIAL DATES: October 13, 1987 through October 14, 1987.

FINAL DISPOSITION: Guilty as charged of food stamp trafficking.

SUMMARY AND SIGNIFICANCE OF CASE: These two individuals operated a local grocery store and were engaged in food stamp fraud. These types of cases are significant because they serve to deter others from engaging in a pattern of conduct which, if left unchecked, could lead to a loss of federal funds from an important federal program designed to provide assistance to lower income families.

FEDERAL REPORTER CITE: Case not appealed.

(9) NAME OF CASE:

State of Louisiana v. Donald Jordan;  
Docket No. 269-824 "C"  
Orleans Parish Criminal District Court

DEFENSE ATTORNEY: Jasper Pharr, Esquire, 4620 San Marco Rd., New Orleans, La. 70119, (504) 255-0693; Milton Masinter, Esquire, 4706 Canal Street, New Orleans, La. 70119, (504) 486-5335.

NATURE OF MY PARTICIPATION: Co-counsel with Asst. U. S. Attorney Fred Harper, Jr., 501 Magazine St., New Orleans, La. 70130, (504) 680-3066

JUDGE: The Honorable Jerome Winsberg (ret.)

TRIAL DATES: July 12, 1979 through July 14, 1979

FINAL DISPOSITION: Guilty of first degree murder and sentenced to death. However, the death penalty was later reversed and, on remand, defendant was sentenced to life imprisonment without benefit of parole.

SUMMARY AND SIGNIFICANCE OF THE CASE: Donald Jordan, a career criminal, along with three other persons randomly chose a home in the lakefront area of New Orleans for the purpose of burglarizing it and robbing the inhabitants. Defendants were looking for money to purchase narcotics. A co-defendant knocked on the door requesting use of a telephone. Mr. Fraering, the victim, came to the front door in order to allow the co-defendant the use of a telephone in the utility shed. When the

victim came outside, three masked men confronted him. (One additional defendant drove the getaway car.) Mr. Fraering, whose family was inside the home, refused to let these individuals inside the house and Mr. Fraering was shot to death by Donald Jordan. The case was significant because of the witness problems in the case, intense publicity, and the grand jury investigation which resulted when it was discovered that members of the New Orleans Police Department were using Jordan as a confidential informant at the time of this offense. A police undercover vehicle was also being used by Jordan to transport these defendants at the time of this offense.

STATE REPORTER CITE: 420 So.2d 420 (La. 1982)

(10) CASE NAME:

State of Louisiana v. Nelson Davis;  
Docket No. 253-056 "A"  
Orleans Parish Criminal District Court

DEFENSE ATTORNEYS: Samuel Gainsburgh, Esquire, 2800 Energy Centre, 1100 Poydras Street, New Orleans, La. 70163, (504) 522-2304; Vincent Glorioso, Jr., Esquire, 815 Baronne Street, New Orleans, La. 70113, (504) 569-9999

NATURE OF MY PARTICIPATION: Co-counsel with Nick Noriea, Jr., Esquire, 1305 West Causeway Approach, Suite 113, Mandeville La., 70471, (504) 727-0086

JUDGE: The Honorable Charles R. Ward

TRIAL DATES: September 27, 1978 through September 28, 1978

FINAL DISPOSITION: Guilty of second degree murder.

SIGNIFICANCE OF CASE: This defendant murdered two state witnesses at a Howard Johnson's motel in New Orleans, La. These witnesses were to testify in a major narcotics case. One of the intended murder victims survived, and while under federal witness protection, testified for the State of Louisiana. The case's significance related to the importance of demonstrating to the community that the State of Louisiana would take all legitimate and lawful steps within its authority to aggressively



prosecute those individuals who attempt, through violence and other means, to undermine the legal system.

STATE REPORTER CITE: 385 So.2d 193 (La. 1980)

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian ad litem, stakeholder, or material witness.

I have been sued by prisoners and one pro se litigant arising out of my work as a federal prosecutor and U. S. Magistrate Judge. See Attachment D in globo. To the best of my recollection, those lawsuits, all of which were dismissed by the U.S. District Court and, in some instances, by the U.S. Fifth Circuit Court of Appeals, include:

1. Tyrone Simmons v. J. T. Hadden, Warden, et al., Civil Action No. 95-1998 "T" (2) (E.D. La. 1995);
2. Tyrone Simmons V. J. T. Hadden, Warden, et al., Civil Action No. 95-1996 "T" (2) (E.D. La. 1995);
3. Leon Gaines v. United States of America, et al., Civil Action No. 94-3032 "D" (4) (E.D. La. 1994);
4. Bobby Laverne Moore v. Ronald I. Shiloh, et al., Civil Action No. 94-700 "F" (1) (E.D. La. 1994);
5. Melvin Hassan Tribbet v. Lance Africk, et al.,

Civil Action No. 92-633 "G" (4) (E.D. La. 1992);

6. Tyrone Simmons v. Judge Africk, M.J., Civil Action No. 92-1052 "G" (2) (E.D. La. 1992);
7. Emmet N. Bartholomew, Pro Se v. Lance M. Africk, et al., Civil Action No. 87-3070 "H" (5) (E.D. La. 1987).

Judicial misconduct complaints were filed against me, as well as a number of other judges, by Josephine S. Lovoi, Earl Robertson, and Janice Donahue. All such allegations have been dismissed as baseless. See Attachment F

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will resolve any potential conflict of interest by following the statutory law, related jurisprudence, and Canons of Ethics/Judicial Code of Conduct.

My financial disclosure form is on record with the U. S. Clerk of Court. Other than tobacco-related litigation, litigation involving Tulane University, and litigation involving the St. Bernard Parish Sheriff's office (my father is an honorary deputy), I know of no categories of litigation or financial arrangements that are likely to present potential conflicts of interest. As a U. S. Magistrate Judge, I have made very effort to avoid any appearance of impropriety.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

During various semesters since 1986 (est.), I have been employed as an instructor at the University of New Orleans where I teach an evening course in federal criminal and civil procedure or selected topics in criminal law. My outside teaching has been approved by

the Chief Judge of the U.S. Fifth Circuit Court of Appeals.

24. Sources of Income: List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached financial disclosure.

25. Statement of Net Worth: Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached net worth statement.

26. Selection Process: Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

(a) and (b)

There was not a "selection commission" with respect to my current candidacy. There was a committee which made recommendations to the White House. Letters and telephone calls were made on my behalf by a large cross-section of the community. I was interviewed by White House counsel and a representative of the Department of Justice. I was not questioned about specific legal issues. The focus was on my qualifications, judicial temperament, and my view of the role of a federal judge.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks		400.00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	771,299.00		Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	1,500.00	
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule		
Real estate owned—add schedule	875,000.00		Chattel mortgages and other liens payable		
Real estate mortgages receivable	77,537.00		Other debts—itemize:		
Autos and other personal property	116,475.00				
Cash value—life insurance	54,455.00				
Other assets—itemize:					
IRAs AND PENSION PLANS	606,104.00				
OWNERSHIP IN PARTNERSHIPS	604,334.00				
OWNERSHIP IN ESTATE	1,300,000.00		Total Liabilities	1,500.00	
			Net Worth	4,404,113.00	
Total Assets	4,405,613.00		Total Liabilities and net worth	4,405,613.00	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	NONE		Are any assets pledged? (Add schedule.)	NO	
On leases or contracts	NONE		Are you defendant in any suits or legal actions?	NO	
Legal Claims	NONE		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	NONE				
Other special debt	NONE				

Cash On Hand and In Banks

Lance M. and Diane K. Africk

<u>In the name of</u>	<u>Bank</u>	<u>Amount</u>
Lance M. and Diane Africk	Whitney National Bank	\$ 409

Listed Securities

Lance M. and Diane K. Africk

<u>Owned by</u>	<u>Description</u>	<u>Amount</u>
Lance M. and Diane K. Africk	15,918 shares of CMA Money Fund	\$ 15,918
Lance M. and Diane K. Africk	35,000 Louisiana St. Univ Agric Mchnl Bond	37,689
Lance M. and Diane K. Africk	15,000 Louisiana Lcl Govt Env Fcs-Cda Rev Bond	15,834
Lance M. and Diane K. Africk	50,000 Arkansas St Dev Fin Auth Rev Bond	52,071
Lance M. and Diane K. Africk	5,000 Arkansas St Dev Fin Auth Home Mtg Rev Bond	5,150
Lance M. and Diane K. Africk	20,000 Mass. Hsg Fin Agy Rev Bond	20,779
Lance M. and Diane K. Africk	190,000 Louisiana Pb Fac At Hosp Rv Bond	187,917
Lance M. and Diane K. Africk	55,000 Minn. St Hsg Fin Agy Sin Fam Mtg Bond	56,802
Lance M. and Diane K. Africk	10 shares Krispy Kreme Doughnuts	349
Lance M. and Diane K. Africk	Accrued interest receivable in Merrill Lynch Account	6,824
Child #1	12,343 shares of CMA Money Fund	12,343
Child #1	15,000 Louisiana Pb Fac At Hosp Rev Bond	14,835
Child #1	50,000 Florida Hsg Fin Agy Bond	52,192
Child #1	Accrued interest receivable in Merrill Lynch Account	1,358
Child #2	1,950 shares of Whitney Holding Corp.	79,775
Child #2	Cash in Legg Mason Investment account	28
Child #2	594,343 shares Legg Mason Value Trust	29,818
Child #2	3,143 shares of CMA Money Fund	3,143
Child #3	1,717,860 shares Vanguard Prime Money Market Fund	1,718
Child #3	1,000 shares Cisco Systems, Inc.	12,170
Child #3	2,006 shares of CMA Money Fund	2,006
Child #3	750 shares of Whitney Holding Corp.	30,683
Child #3	Cash in Legg Mason Investment account	66
Child #3	1,713,682 shares Legg Mason Value Trust	85,975
Child #3	1,467,643 shares Legg Mason Special Inv. Trust	45,746
Total		<u>\$ 771,299</u>

Real Estate Owned

Lance M. and Diane K. Africk

<u>Owned by</u>	<u>Description</u>	<u>Amount</u>
Lance M. and Diane K. Africk	Residence, New Orleans, LA (Value estimated)	<u>\$ 875,000</u>

Real Estate Mortgage Receivable  
Lance M. and Diane K. Africk

<u>Owned by</u>	<u>Description</u>	<u>Amount</u>
Diane K. Africk	4.9% interest in a mortgage note receivable from Industries Realty Partnership, including accrued interest, interest rate of 10%, secured by real estate located at 234 Loyola Ave., New Orleans, LA	<u>\$ 77,537</u>

The above note and accrued interest receivable were valued at 50% of the amount due.

Autos and other personal property  
Lance M. and Diane K. Africk

<u>Autos</u>	<u>Amount</u>
2000 E320 Mercedes Benz Sedan	\$ 39,910
2000 Chevrolet Suburban 1500 Sport Utility	20,565
<u>Other Personal property</u>	
Jewelry	10,000
Contents and furnishings	<u>46,000</u>
Total	<u>\$ 116,475</u>

Cash Value - Life Insurance  
Lance M. and Diane K. Africk

<u>Insurance Company</u>	<u>On Life Of</u>	<u>Beneficiary</u>	<u>Face Amount</u>	<u>Cash Surrender Value</u>
Prudential Insurance Co.	Lance M. Africk	Diane K. Africk	\$ 175,000	\$ 34,692
Prudential Insurance Co.	Diane K. Africk	Lance M. Africk	175,000	<u>19,763</u>
Total				<u>\$ 54,455</u>

Individual Retirement Accounts and Pension Plans  
Lance M. and Diane K. Africk

<u>Description</u>	<u>Amount</u>
<u>Individual retirement accounts</u>	
Prudential Life Insurance Co. - Lance M. Africk	\$ 79,390
Prudential Life Insurance Co. - Diane K. Africk	<u>69,372</u>
<u>Pension plans</u>	
Thrift Savings Plan for Federal Employees - Lance M. Africk	262,124
Teachers Insurance and Annuity Association - Diane K. Africk	<u>195,218</u>
Total	<u>\$ 606,104</u>

Ownership in Partnerships  
Lance M. and Diane K. Africk

<u>Owned by</u>	<u>Description</u>	<u>Amount</u>
Diane K. Africk	5% interest in Village Square Shopping Center General Partnership (Value estimated)	\$ 455,000
Diane K. Africk	7.75190% interest in Lakewood Associates Limited Partnership (Value estimated)	149,334
Total		<u>\$ 604,334</u>

Ownership in Estate  
Lance M. and Diane K. Africk

<u>Owned by</u>	<u>Description</u>	<u>Amount</u>
Diane K. Africk	An undivided one-half remainder interest in the Estate of Samuel B. Katz (Value estimated)	<u>\$ 1,300,000</u>

AO-10 (a)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) APRICK, LANCE M.	2. Court or Organization USDC, EASTERN DISTRICT OF LA	3. Date of Report 01/25/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. DISTRICT JUDGE NOMINEE	5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 12/31/2001
7. Chambers or Office Address 501 MAGAZINE STREET ROOM E-335 NEW ORLEANS, LA 70130	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)
☐ NONE (No reportable positions.)

NAME OF ORGANIZATION / ENTITY

1. TRUSTEE	FAMILY TRUST NO. 2 (DC 2)
2.	
3.	

**AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE

PARTIES AND TERMS

☒ NONE (No reportable agreements.)

1.		
2.		
3.		

**NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(Yours, not spouse's)
☐ NONE (No reportable non-investment income.)

2000	UNIVERSITY OF NEW ORLEANS	\$5,500.00
2000	TULANE UNIVERSITY (S)	
2001	Louisiana Supreme Court Clerk's Office (DC2)	



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	AFRICK, LANCE M.	01/25/2002

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1			
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			
6			

VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting AFRICK, LANCE M.		Date of Report 01/25/2002	
<b>VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	NONE  If not exempt from disclosure: (1) Type (e.g., buy, sell, partial sale, merger, redemption) (2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
1 MERRILL LYNCH PRIORITY CMA	A	Dividend			
2 INDUSTRIES REALTY NOTE (S)	None	None	M	U	
3 FAMILY TRUST NO. 2 (DC2)	A	Rent	J	W	See explanatory note
4 PRUDENTIAL UNIV. LIFE (S)	A	Dividend	K	T	
5 PRUDENTIAL UNIV. LIFE	A	Dividend	K	T	
6 PRUDENTIAL IRA (S) (COMMON STOCK PORTFOLIO)	A	Dividend	L	T	
7 PRUDENTIAL IRA (COMMON STOCK PORTFOLIO)	A	Dividend	L	T	
8 TRACHERS INSURANCE AND ANNUITY ASSOCIATION (S)	A	Dividend/ Int	M	T	
9 LEGG MASON TRUST (DC3)	A	Dividend/ Int	M	T	
10 LEGG MASON TRUST (DC4)	A	Dividend/ Int	K	T	
11 WHITNEY STOCK (DC3)	C	Dividend	L	T	
12 WHITNEY STOCK (DC4)	B	Dividend	K	T	
13 VILLAGE SQUARE SHOPPING CENTER Pehip., (S) Baton Rouge, LA	E	Rent	N	U	
14 MERRILL LYNCH PRIORITY CMA	A	Dividend	K	T	
15 MERRILL LYNCH PRIORITY CMA (DC2)	A	Dividend	J	T	
16 VANGUARD PRIME MONEY MARKET (DC3)	A	Dividend	J	T	
17 CISCO SYSTEMS, INC. (DC3)	A	Dividend	K	T	
Inc/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 Col. B1, D4    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    I2=\$5,000,001 or more					
Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 Col. C1, D3    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more					
Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market Col. C2    U=Book Value    V=Other    W=Estimated					

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting  
AFRICK, LANCE M.

Date of Report  
01/25/2002

**VII. Page 2 INVESTMENTS and TRUSTS -- Income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 MASS. HSG. FIN. AGY. (Municipal Bond)	B	Interest	K	T					
19 MINN. ST. HSG. FIN. AGY. (Municipal Bond)	C	Interest	L	T					
20 ARKANSAS ST. DEV. AUTH. (Municipal Bond)	C	Interest	L	T					
21 LOUISIANA STATE (Municipal Bond)	D	Interest	M	T					
22 FLORIDA HSG. FIN. AGY. (Municipal Bond) (DC2)	C	Interest	L	T					
23 LOUISIANA ST. (Municipal Bond) (DC2)	A	Interest	J	T					
24 LOUISIANA ST. (Municipal Bond)	A	Interest	K	T					
25 LOUISIANA STATE (Municipal Bond)	B	Interest	K	T					
26 NLSP 500 Index Mutual Fund (DC2)	A	Dividend	J	T					
27 MERRILL LYNCH PRIORITY CMA (DC3)	A	Dividend	J	T					
28 MERRILL LYNCH PRIORITY CMA (DC4)	A	Dividend	J	T					
29 MERRILL LYNCH BANKING ADV.	A	Interest							
30 LAKEWOOD ASSOCIATES LTD. PRIP. (S)	D	Interest	M	U					
31 AIM SELECT GROWTH FUND CLASS C (DC3)	A	Interest	J	T					
32 Walt Disney Co. (DC3)	A	Dividend	J	T					
33 Arkansas ST (Municipal Bond)	A	Interest	J	T					
34 Krispy Kreme Doughnuts (stock)	A	Dividend	J	T					

Gain Codes: A=\$1,000 or less	B=\$1,001-\$2,500	C=\$2,501-\$5,000	D=\$5,001-\$15,000	E=\$15,001-\$50,000
L Bl, D4) F=\$50,001-\$100,000	G=\$100,001-\$1,000,000	H=\$1,000,001-\$5,000,000	H2=\$5,000,001 or more	
Codes: J=\$15,000 or less	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000	N=\$250,001-\$500,000
L, C1, D3) O=\$500,001-\$1,000,000	P1=\$1,000,001-\$5,000,000	P2=\$5,000,001-\$25,000,000	P3=\$25,000,001-\$50,000,000	P4=\$50,000,001 or more
Mth Codes: Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
.C2) U=Book Value	V=Other	W=Estimated		

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting AFRICK, LANCE N.				Date of Report 01/25/2002			
<b>VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Include those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)									
35 Krispy Kreme Doughnuts (stock)	A	Dividend	J	T					
36									
37									
38									
39									
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									
al Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 of B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more al Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 of C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more al Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market of C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	AFRICK, LANCE M.	02/25/2002

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

VII. 3. The piece of real estate in Galliano, Louisiana, which was sold during the reporting period was the only thing of value held in trust.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	AFRICK, LANCE M.	02/25/2002

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 1-25-02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Chairman LEAHY. Your parents look as though they are appropriately proud to be here, and I am delighted.

Mr. Cassell, did you wish to introduce anyone?

**STATEMENT OF PAUL CASSELL, NOMINEE TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF UTAH**

Mr. CASSELL. Thank you, Mr. Chairman. I also want to thank you for scheduling the hearing.

I am also proud to introduce my family: my wife, Trish Cassell; my oldest daughter, Anna; Emily and Sarah, working on their coloring right now.

Chairman LEAHY. They know their priorities.

Mr. CASSELL. My father, William Cassell; my mother, Jean Cassell, is recovering from surgery and could not travel.

Chairman LEAHY. I understand. In fact, this is one of the reasons why we had the hearing today and not a week before.

Mr. CASSELL. Yes, and I appreciate the committee's accommodation of that.

My sister, Susan, and her son, Stephen, and family friends Mark Hulkower, Gary Shapiro, Jimmy Gurlay, and Mark Farnham.

Chairman LEAHY. We welcome you all for being here.

[The biographical information of Mr. Cassell follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Paul George Cassell

2. Address: List current place of residence and office address(es).

Residence: Salt Lake City, UT

Office: University of Utah College of Law, Salt Lake City, UT

3. Date and place of birth.

6/5/1959. Orange, CA.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married - Patricia Mary Smith.

Part-time prosecutor, Sandy City, UT.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Stanford University, 9/77-6/79; 6/81-8/81 (B.A. 1981)

Western Washington University, 9/79-6/81.

Stanford Law School, 9/81-6/84 (J.D. 1984).

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer, 1982 Jones, Day, Reavis & Pogue, Los Angeles, CA (summer associate).

Summer, 1983 Cravath, Swaine & Moore, New York, NY (summer associate).

Summer, 1984 Morrison and Foerster, San Francisco, CA (summer associate).

1984-85 Judge Antonin Scalia, U.S. Court of Appeals for

the District of Columbia Circuit, Washington, DC (law clerk).  
 1985-86 Justice Warren E. Burger, United States Supreme Court, Washington, DC (law clerk).  
 1986-88 U.S. Department of Justice, Office of the Deputy Attorney General, Washington, DC (Associate Deputy Attorney General).  
 1988-91 U.S. Department of Justice, U.S. Attorney's Office, Alexandria, VA, and Norfolk, VA (Assistant U.S. Attorney).  
 1992-date University of Utah College of Law, Salt Lake City, UT (law professor).  
 1995-date Hatch, James & Dodge, Salt Lake City, UT (never an employee, but served as a special counsel on various projects).

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Stanford Law School, Order of the Coif (top 10%).  
 Stanford University, graduated with distinction and departmental honors.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member, Utah Bar.

Member, American Bar Association.

Member, Utah Supreme Court Advisory Committee on Rules of Criminal Procedure.

Federalist Society:

\* Co-Chair, Violent Crime, Death Penalty and Crime Victims Subcommittee of the Criminal Practice Group (1998 to present).

\* Faculty Adviser, Student Chapter, University of Utah College of Law (1992 to present).



\* Advisory Board, Salt Lake Lawyers Chapter (1994 to present).  
 Sutherland Institute, Advisory Board (1997 to 2001).  
 Crime Watch, Advisory Board (2000 to present).  
 Utah Council on Crime Victims:  
 \* Chair, Legislative Subcommittee (1993 to present).  
 National Victims Constitutional Amendment Network:  
 \* Executive Committee (1995 to present).  
 Member, Advisory Council of the National Institute for Victim<sup>™</sup> Studies (2000 to present).  
 Member, National Lawyers Association (1998-2001).  
 Member, ABA Section on Criminal Justice Ad Hoc Committee on the U.S. Sentencing Commission (1987-88).

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Lobbying Organizations

National Victims Constitutional Amendment Network.

Other Organizations

National Association of Scholars  
 Parish Member, St. Ambrose Catholic Church (Salt Lake City, UT).  
 Jewish Community Center (Salt Lake City, UT).  
 The Utah Nordic Alliance (TUNA).  
 Volunteer Soccer Coach, Skyline Soccer League.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Member, Utah Bar (1992 to present)  
 Member, Pennsylvania Bar (1986 to 1992) (took inactive status to join Utah bar).  
 Admitted to practice: U.S. Supreme Court; U.S. Court of Appeals, 4th, 5th, 9th, 10th, and D.C. Circuits; U.S. District Courts for the District of Utah and the Eastern District of Virginia; Utah Supreme Court.

12. Published Writings: List the titles, publishers, and dates

of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Law Review and Other Substantial Articles

"The Paths Not Taken: A Critique of the Supreme Court's Decision in *Dickerson*," 99 MICH. L. REV. \_\_\_\_ (forthcoming 2001).

"A Tribute to Joe Grano: He Kept the Flame Alive," 46 WAYNE L. REV. 1215 (2000).

"Will *Miranda* Survive? *Dickerson v. United States*: The Right to Remain Silent, The Supreme Court, and Congress," 37 AM. CRIM. L. REV. 1165 (2000).

"The Statute That Time Forgot: 18 U.S.C. § 3501 and the Overhauling of *Miranda*," 85 IOWA L. REV. 175 (1999).

"Barbarians at the Gates: A Reply to the Critics of the Victims Rights Amendment," 1999 UTAH L. REV. 479 (1999).

"The Guilty and the 'Innocent': An Examination of Alleged Cases of Wrongful Conviction from False Confessions," 22 HARV. J.L. & PUBLIC POL'Y 523 (1999).

"Handcuffing the Cops? A Thirty Year Perspective on *Miranda*'s Effects on Law Enforcement," 50 STANFORD L. REV. 1055 (1998) (co-author with Richard Fowles).

"Declining Clearance Rates After *Miranda*: Coincidence or Consequence?," 50 STANFORD L. REV. 1181 (1998) (co-author with Richard Fowles).

"Handcuffing the Cops: *Miranda*'s Harmful Effects on Law Enforcement," NCPA Policy Report No. 218, August 1998.

"Protecting the Innocent from False Confessions and Lost Confessions -- And From *Miranda*," 88 J. CRIM. L. & CRIMINOLOGY 497 (1998).

"Evidence of Repeated Acts of Child Molestation and Rape: The Need to Reform Utah Law to Insure Admissibility," 1998 UTAH L. REV. 145 (co-author with Evan Strassberg).

"Balanced Approaches to the False Confession Problem: A Brief Comment on Ofshe, Leo and Alschuler," 74 DENV. U.L. REV. 1123 (1997).

"Miranda's Negligible Effect on Law Enforcement: Some Skeptical Observations," 20 Harv. J. L. & Pub. Pol'y 327 (1997).

"The Costs of the *Miranda* Mandate: A Lesson in the Dangers of Inflexible, Prophylactic Supreme Court Inventions," 28 ARIZ. ST. L.J. 299 (1996).

"Police Interrogation in the 1990s: An Empirical Study of the Effects of *Miranda*," 42 UCLA L. REV. 839 (1996) (co-author with Bret Hayman).

"All Benefits, No Costs: The Grand Illusion of *Miranda*'s Defenders," 90 NORTHWESTERN U.L. REV. 1084 (1996).

"*Miranda*'s Social Costs: An Empirical Reassessment," 90 NORTHWESTERN U.L. REV. 387 (1996).

"Search and Seizure Law in Utah: The Irrelevance of the Antipolygamy Raids," 1995 BYU LAW REV. 1.

"Balancing the Scales of Justice: The Case For and Effects Of Utah's Victims Rights Amendment," 1994 UTAH LAW REV. 1373.

"The Rodney King Trials and the Double Jeopardy Clause: Some Observations on Original Meaning and the ACLU's Schizophrenic Views of the Dual Sovereign Doctrine," 41 UCLA LAW REV. 693 (1994).

"The Mysterious Creation of Search and Seizure Exclusionary Rules Under State Constitutions: The Utah Example," 1993 UTAH LAW REV. 753.

"The Supreme Court's Decisions on the Not-So-Peremptory Challenge," 1992 PUBLIC INTEREST LAW REV. 11.

"Protecting the Innocent: A Response to the Bedau-Radelet Study," 41 STANFORD L. REV. 121 (1988) (co-author with Stephen J. Markman) (reprinted in part in 136 CONG. REC. S6648 (May 21, 1990) and in A

CAPITAL PUNISHMENT ANTHOLOGY (Victor L. Strieb. ed. 1993)).

"Restrictions on Press Coverage of Military Operations: The Right of Access, Grenada, and 'Off the Record' Wars," 73 GEORGETOWN L.J. 931 (1985).

"Exemption of International Shipping Conferences from the American Antitrust Laws: An Economic Analysis," 20 NEW ENGLAND L. REV. 1 (1984).

Note, "Establishing Violations of International Law: Yellow Rain and the Chemical and Biological Warfare Agreements," 35 STANFORD L. REV. 259 (1983).

THE GREAT DEBATE: INTERPRETING OUR WRITTEN CONSTITUTION (editor) (1987).

"Report to the Deputy Attorney General on Capital Punishment and the Sentencing Commission," Feb. 13, 1987 (co-author with William F. Weld).

#### Testimony

"The Justice Department's Failure to Enforce 18 U.S.C. § 3501," Testimony before the Subcomm. on Criminal Justice Oversight of the Senate Judiciary Comm., May 13, 1999 (Washington, D.C.).

"The Right of Crime Victims to be Heard Throughout the Criminal Justice Process," Testimony before the Subcomm. on the Constitution of the Senate Judiciary Comm., May 1, 1999 (St. Louis, Missouri).

"A Response to the Critics of the Victims' Rights Amendment," Testimony before the Senate Judiciary Comm., Mar. 24, 1999 (Washington, D.C.).

"The Victims' Rights Amendment," Testimony before the Senate Judiciary Comm., Apr. 28, 1998 (Washington, D.C.).

"A Constitutional Amendment Protecting the Rights of Crime Victims," Testimony before the Senate Judiciary Comm., Apr. 16, 1997 (Washington, D.C.).

"The Victims' Bill of Rights Amendment," Testimony before the Senate Judiciary Comm., Apr. 23, 1996 (Washington, D.C.).

"Admission of Sexual Assault Counselors During Trials," Testimony

before the House Judiciary Comm. of the Utah Legislature, Feb. 7 and 9, 1996.

"The Performance of the Solicitor General's Office in Criminal Cases," Testimony before the Senate Judiciary Comm., Nov. 14, 1995 (Washington, D.C.).

"Reforming the *Miranda* Rules in Federal Courts," Testimony before the Senate Judiciary Comm., Mar. 7, 1995 (Washington, D.C.).

"Amending the Idaho Constitution to Provide for Consistent Interpretation of Search and Seizure Rules," Testimony before the Senate Judiciary Comm. of the Idaho Legislature, Feb. 1, 1995 (Boise, Idaho).

"Amending the Idaho Constitution to Provide for the Rights of Crime Victims," Testimony before the Senate Judiciary Committee of the Idaho Legislature, March 2, 1994 (Boise, Idaho).

"A Constitutional Declaration of the Rights of Crime Victims," Testimony before the Utah House State and Local Affairs Comm., Feb. 24, 1994 (Salt Lake City, Utah).

"Amending the Idaho Constitution to Provide for the Rights of Crime Victims," Testimony before the House Judiciary Comm. of the Idaho Legislature, February 12, 1994 (Boise, Idaho).

"Requiring the Admission of Evidence Obtained in Lawful Searches," Testimony Before the Utah Senate Comm. on the Judiciary, Jan. 24, 1994; Before the House Comm. on the Judiciary, Feb. 2, 1994 (Salt Lake City, Utah).

"The Role of the Death Penalty in Protecting the Innocent," Testimony before the Subcomm. on Crime of the U.S. House Judiciary Committee, Oct. 21, 1993 (Washington, D.C.).

"Claims of Innocence in Capital Cases," Testimony before the Subcomm. on Civil and Const. Rights of the U.S. House Judiciary Committee, July 23, 1993 (Washington, D.C.).

"Procedures for Raising Claims of Innocence in Capital Cases," Testimony before the U.S. Senate Judiciary Committee, April 1, 1993 (Washington, D.C.).

"Requiring the Admission of Relevant Evidence in Criminal Proceedings," Testimony Before the Utah Senate Comm. on the

Judiciary, Feb. 11, 1993; Before the Utah Senate (Comm. of the Whole), Feb. 17, 1993; Before the Utah House Comm. on the Judiciary, Feb. 25, 1993 (Salt Lake City, Utah).

"The Possibility of Mistake in Capital Cases," Testimony Before the U.S. Senate Committee on the Judiciary, Sept. 28, 1989 (Washington, D.C.).

"Habeas Corpus and Capital Punishment Legislation," Testimony Before the Subcommittee on Government Information, Justice, and Agriculture of the U.S. House Comm. on Government Operations, Feb. 26, 1988 (Tallahassee, Fla.).

Popular Publications - National

"The Supreme Court's *Miranda* Mutant," CRIMINAL LAW AND PROCEDURE NEWS, Fall, 2000, at 1.

"We're Not Executing the Innocent," WALL STREET JOURNAL, June 16, 2000, at A14.

"Fixing *Miranda*," THE PROSECUTOR, Feb., 2000, at 35 (co-author with William Otis).

"Take Technicality Out of *Miranda*," L.A. TIMES, Dec. 6, 1999, at B7.

"Section 3501 Offers More Sensible Test Than *Miranda*," CRIMINAL JUSTICE WEEKLY, Nov. 30, 1999, at 652.

"Worth Reading," THE CRIME VICTIMS REPORT, Sept. 1999, at 53 (reviewing DOUGLAS E. BELOOF, VICTIMS IN CRIMINAL PROCEDURE).

"Make Amends to Crime Victims," WALL STREET JOURNAL, July 20, 1999, at A22.

"Sentence Structure," WALL STREET JOURNAL, Oct. 20, 1998, at A16 (reviewing *Fear of Justice*).

"Embed the Rights of Victims in the Constitution," L.A. TIMES, July 6, 1998, at B7 (co-author with Laurence H. Tribe).

"Why the Crime Victims' Rights Amendment is a Good Idea," CRIMINAL LAW NEWS, Summer 1998, at 1 (co-author with Steve Twist).

"Paying the Highest Price," WASHINGTON POST BOOK WORLD, Feb. 8, 1998,

at A5.

"Another Law Janet Reno Doesn't Like," WALL STREET JOURNAL, Aug. 27, 1997, at A13 (co-author with Paul Kamenar).

"The Tale of Victims' Rights," LEGAL TIMES, Dec. 23, 1996, at 32 (co-author with Robert F. Hoyt).

"True Confessions About *Miranda's* Legacy," LEGAL TIMES, July 22, 1996, at 20.

"A Bill of Rights for Crime Victims," WALL STREET JOURNAL, Apr. 24, 1996, at A15 (co-author with Steven Twist).

"True Confessions: *Miranda's* Hidden Costs," NATIONAL REVIEW, Dec. 25, 1995, at 30 (co-author with Steve Markman).

"The Damaging Effects of *Miranda*," THE STANFORD LAWYER, Fall 1995, at 14.

"What's Ken Starr Looking For?," WALL STREET JOURNAL, Nov. 1, 1995, at A15.

"Perspectives on *Miranda*," NAAUSA News, July 1995, at 5.

"Tossing Out the Law on Confessions," THE LEGAL TIMES, Apr. 24, 1995, at 26-30.

"How Many Criminals Has *Miranda* Set Free?," WALL STREET JOURNAL, Mar. 1, 1995, at A17.

Editor-in-Chief, National Association of Assistant U.S. Attorneys Newsletter and Case Update, 1994-95 (volume 1).

"A Federal Statute that Overrules *Miranda*: A New Argument for Federal Prosecutors in Confession Cases," 2 CRIMINAL PRACTICE LAW REPORTER 145 (Sept. 1994) (co-author with Joseph D. Grano).

"In Defense of the Death Penalty," THE LEGAL TIMES, May 3, 1993, at 33.

"No More Peremptories?," THE LEGAL TIMES, July 27, 1992, at S36.

Popular Publications - Regional

"It's Time to Fix *Miranda* Ruling," SALT LAKE TRIBUNE, May 7, 2000, at

AA3.

"Time for a Victims' Rights Amendment to the Constitution," LAS VEGAS REVIEW-JOURNAL, Aug. 12, 1999, at 17B.

"1996 Crime Victim Legislative Summary," Utah Crime Victim Reparations Newsletter, Summer, 1996.

"Fight for Victims' Justice is Going Strong," DESERET NEWS, July 10, 1996, at A7.

"Proposition 1: Protecting the Rights of Crime Victims (parts 1 & 2)," THE INTERMOUNTAIN COMMERCIAL RECORD, Sept. 23 & Sept. 30, 1994.

"Capital Punishment," CONTINUUM: THE MAGAZINE OF THE UNIV. OF UTAH, Spring 1994, at 9.

Letter to the Editor, Salt Lake Tribune, July 9, 1993, at A16.

"Balancing the Scales of Justice: A Proposed Constitutional Declaration of the Rights of Crime Victims," Nov. 10, 1993.

"The Myth of the Executed Innocents," S.L. COUNTY BAR & BENCH BULL., May 1993, at 7.

"Out of Thin Air: The Invention of the Utah Exclusionary Rule," THE INTERMOUNTAIN COMMERCIAL RECORD, Feb. 19, 1993 (also appeared in the NEO-ANALYST).

#### Legal Training Presentations

Federal Search and Seizure Law: Vehicle Stops and Searches, Narcotics Interdiction Course, Sponsored by U.S. Attorney's Office, Feb. 3, 1993.

Constitutional Issues in Evidence, Utah Prosecution Council's Fall Training Conference, Sept. 16, 1992 (Brian Head, UT).

#### Speeches and Debates (copies not available)

Debate Against Prof. Lynne Henderson, on Amending the Constitution to Protect Crime Victims Rights, UNLV School of Law, Apr. 11, 2001 (Las Vegas, Nevada).

"How Many Criminals Has *Miranda* Set Free," Presentation at BYU, the J. Reuben Clark Law School, Mar. 20, 2001 (Provo, Utah).



"What Next on *Miranda*?," Presentation to the AALS Annual Convention, Jan. 6, 2001 (San Francisco, California).

"The Application of Witness Sequestration Rules to Crime Victims," Presentation to the Annual Law Professors Conference of the Federalist Society, Jan. 4, 2001 (San Francisco, California).

Panel Presentation on the Future of *Miranda* After *Dickerson*, with Profs. Yale Kamisar and Stephen Schulhofer, Nov. 17, 2000, Univ. of Michigan Law School (Ann Arbor, Michigan).

Panel Presentation on the Empirical Research on *Miranda*, with Prof. Richard Leo, Nov. 18, 2000 Univ. of Michigan Law School (Ann Arbor, Michigan).

Debate Against Prof. Stephen Schulhofer, Univ. of Chicago Law School, on the Crime Victims Rights Amendment, Oct. 23, 2000 (Chicago, Illinois).

Debate Against Prof. Doug Godfrey, Chicago-Kent School of Law, on the Crime Victims Rights Amendment, Oct. 19, 2000 (Chicago, Illinois).

Presentation to the Federalist Society, Northwestern Univ. School of Law, Oct. 19, 2000 (Chicago, Illinois).

"Considering the Death Penalty," Mayor, Day, Caldwell & Keeton Debate against Stephen Bright, Oct. 3, 2000 (University of Houston Law Center) (broadcast on C-SPAN).

"The Supreme Court's Wrong Turn on *Miranda* Doctrine," Presentation to the Hinckley Inst., Sept. 25, 2000 (Salt Lake City, Utah) (rebroadcast on KULC-TV).

"The Future of *Miranda*," Mellon Lecture to the Univ. of Pittsburgh School of Law, Sept. 14, 2000 (Pittsburgh, Pennsylvania).

"New Problems with *Miranda* Doctrine," Presentation to the Annual Convention of the Utah State Bar July 13, 2000 (San Diego, California).

"Arguing in the Supreme Court to Trim Back *Miranda*," Presentation to the Constitutional Law Section of the Utah State Bar, May 24, 2000 (Salt Lake City, Utah).

Stranahan National Issues Forum Lecture, "The Future of *Miranda*: Arguing *Dickerson v. United States* Before the United States Supreme Court," Univ. of Toledo Law Center, Apr. 20, 2000 (Toledo, Ohio).

Debate Against Jamin Raskin, on *Miranda*, American University Law School, April 11, 2000 (Washington, D.C.).

Debate Against Jeffrey Rosen, on *Miranda*, George Washington Univ. Law Center, April 10, 2000 (Washington, D.C.).

"Arguing *Miranda* in the Supreme Court," Presentation at the Univ. of Utah College of Law, April 5, 2000 (Salt Lake City, Utah).

"The Future of *Miranda*," Presentation at George Mason School of Law, March 29, 2000 (Washington, D.C.).

"Will *Miranda* Survive?," the 2000 Annual Debate of the *American Criminal Law Review*, March 28, 2000 (Washington, D.C.).

"Is *Miranda* Dead?," Presentation at UCLA School of Law, March 9, 2000 (Los Angeles, California).

"Perspectives on *Miranda*," Presentation at Loyola Law School, March 9, 2000 (Los Angeles, CA).

"*Miranda* Revisited," Debate Against Professor Yale Kamisar, Univ. of San Diego School of Law, March 7, 2000 (San Diego, California) (broadcast on C-SPAN).

"Enforcing Victims Rights," Presentation to the Victims' Rights Implementation Skills-Building Technical Assistance Program of the National Criminal Justice Association, January 13, 2000 (Salt Lake City, Utah).

Panel Participant, Community Justice, Salt Lake County Crime Reduction Conference, Sept. 21, 1999 (Salt Lake City, Utah).

Debate Against Prof. Jim Tomkovicz on the Future of *Miranda* Warnings, University of Iowa College of Law, September 13, 1999 (Iowa City, Iowa).

Panel Participant, The Victim's Rights Amendment, National Organization for Victim Assistance Nat'l Conference, Sept. 3, 1999 (Los Angeles, California).

"The 'Overruling' of *Miranda* in *United States v. Dickerson*,"  
Presentation at the Lewis and Clark Northwestern School of Law,  
April 8, 1999 (Portland, Oregon).

"The Uncertain Future of *Miranda*," Presentation at the University  
of Arizona School of Law, March 25, 1999 (Tucson, Arizona).

Participant in television program *Debates, Debates* on the topic  
Resolved: That *Miranda* Rights Should Be Abolished, November 1,  
1998 (New York, New York).

Participant in television program *Debates, Debates* on the topic  
Resolved: That Victims' Rights Amendment Should be Adopted,  
October 22, 1998 (New York, New York).

"Will Clinton Survive?," A Debate Against former Representative  
Wayne Owens, Hinckley Institute of Politics, September 21, 1998  
(Salt Lake City, Utah).

"A Response to the Critics of the Victims' Rights Amendment,"  
Presentation at the 1998 *Utah Law Review Symposium*, September 19,  
1999 (Salt Lake City, Utah).

Debate Against Don McWhorter, on the Victims' Rights Amendment,  
Arizona State University School of Law, September 10, 1998  
(Phoenix, Arizona).

Presentation to the National Center for Policy Analysis Public  
Forum on *Miranda*, August 13, 1998 (Washington, D.C.).

"The Proposed Victims Rights Amendment," Presentation to the  
Eleventh Annual Victims' Conference, April 23, 1998 (Salt Lake  
City, Utah).

"Should *Miranda* Be Overruled?," Presentation at Boalt Hall School  
of Law, April 7, 1998 (Berkeley, California).

"Should *Miranda* Be Overruled?," Presentation at Stanford Law  
School, April 7, 1998 (Palo Alto, California).

Debate Against David Gossett, on *Miranda*, Northwestern Univ.  
School of Law, March 9, 1998 (Chicago, Illinois).

Debate Against Professor Don Dripps, on *Miranda*, Univ. of  
Minnesota Law School, March 10, 1998 (Minneapolis, Minnesota).

Presentation to the Faculty of the Univ. of Minnesota Law School, on the Risk to the Innocent from *Miranda*, March 10, 1998 (Minneapolis, Minnesota).

"The Exotic and the Routine: Tradeoffs Between False Confessions and Lost Confessions," Presentation to the Constitutional Theory Seminar, Univ. of Virginia, September 29, 1997 (Charlottesville, Virginia).

"The Original Intent of the Constitution," A Debate Against Professor J.D. Williams before the Huntsman Seminar in Constitutional Government, June 26, 1997 (Salt Lake City, Utah).

"Combating New Types of Economic Crimes in Russia and the United States," Presentation to the U.S. Dept. of Justice International Conference of Criminalists and Criminologists' Union, May 20-21, 1997 (Moscow, Russia).

"Perspectives on the Criminal Justice System," KUED Ch. 7 Civic Dialogue Program, May 16, 1997 (Salt Lake City, Utah).

"Developments in Victims Rights and Legislation," Presentation to the Tenth Annual Victims' Conference, April 27, 1997 (Salt Lake City, Utah).

"Should We Reform *Miranda*," Presentation to the Federalist Society at the Univ. of San Diego School of Law, April 14, 1997 (San Diego, California).

"Overruling *Miranda*," Debate Against Prof. Yale Kamisar, Univ. of Michigan School of Law, April 7, 1997 (Ann Arbor, Michigan).

"Establishing Tribal Code Provisions and Victims' Bill of Rights," Presentation to the Office for Victims of Crime Sixth National Conference: Justice for Victims of Crime in Indian Country, January 24, 1997 (San Diego, California).

"Policy Orientation Program for Newly Elected U.S. Senators: Criminal Justice Issues," Library of Congress, December 5, 1996 (Washington, D.C.).

"Time to Reform *Miranda*?," Debate Against Prof. Kling, Chicago-Kent School of Law, November 18, 1996 (Chicago, Illinois).

"Time to Reform *Miranda*?," Presentation at the Loyola School of Law, November 18, 1996 (Chicago, Illinois).

"Handcuffing the Cops," Presentation with Comments by Professor Myron Moskowitz, Golden Gate School of Law, September 30, 1996 (San Francisco, California).

"Time to Overrule *Miranda*?", Debate Against John Frank (Miranda's Supreme Court Lawyer), Arizona State Law School, September 9, 1996 (Phoenix, Arizona).

"*Miranda* at Thirty: Still Good After All These Years?," Presentation to the ABA National Convention, Criminal Justice Section, August 3, 1996 (Orlando, Florida).

"The Victims Bill of Rights Amendment," Presentation to the Ninth Annual Utah Victims' Conference, April 24, 1996 (Salt Lake City, Utah).

"How Many Criminals Has *Miranda* Released," Debate Against Professor Sam Pillsbury, Loyola Law School, April 8, 1996 (Los Angeles, California).

"Reforming *Miranda*: A Proposal for Congressional Action," Presentation to the Heritage Foundation, March 22, 1996 (Washington, D.C.).

"Dump *Miranda*? A Panel Discussion with Professors Yale Kamisar, Steve Schulhofer, Fred Inbau, Joe Grano, Ron Allen and Others, Northwestern Univ. School of Law, Mar. 21, 1996 (Chicago, Illinois).

"The Hidden Costs of *Miranda*," Debate against Mark Mestel, Before the Seattle Lawyers Chapter of the Federalist Society, March 11, 1996 (Seattle, Washington).

"Can You Ever Trust a Judge: Mandatory Minimum Sentencing," Debate against Ron Yengich, Before the Utah State Bar, March 9, 1996 (St. George, Utah)

"Handcuffing the Cops: The Aftermath of *Miranda*," Presentation with Stephen Schulhofer and Peter Arenalla, 15th Annual National Student Federalist Society Symposium on Law and Public Policy-1996, Stanford Law School, February 26, 1996 (Palo Alto, California).

"*Miranda*: Time for an Overhaul," Debate against John O'Connell, Univ. of Utah College of Law, February 14, 1996 (Salt Lake City, Utah).

"The Execution of John Albert Taylor," Debate against Ron Yengich moderated by Rod Decker, on KUTV's *Take Two*, January 14, 1996 (Salt Lake City, Utah).

"Miranda as Federal Mandate," Panel Presentation to the Goldwater Institute, November 4, 1995 (Phoenix, Ariz.).

"The Dramatic Effects of *Miranda* on the American Criminal Justice System," Address to the Hinckley Institute of Politics, Coffee and Politics Series, October 31, 1995 (Salt Lake City, Utah).

Debate Against Prof. David Sklansky, on *Miranda*, UCLA School of Law, October 30, 1995 (Los Angeles, California).

Panel Discussion "Toward Domestic Violence Awareness," Sponsored by the Women's Law Caucus, Univ. of Utah College of Law, October 10, 1995 (Salt Lake City, Utah).

"Victims Rights in Juvenile Court Cases," Presentation to the Utah Prosecution Council Juvenile Justice Training Conference, August 17, 1995 (Provo, Utah).

"Victims' Concerns and Mandatory Minimum Sentences for Child Molesters," Presentation to the Utah State Sentencing Comm., July 19, 1995 (Salt Lake City, Utah).

"*Miranda's* Social Costs: The New Empirical Arguments," Presentation to the Univ. of Utah College of Law Faculty, June 28, 1995 (Salt Lake City, Utah).

"Victims' Issues and Judicial Obligations," Presentation to the 1995 District Court Judges' and Commissioners' Conference May 12, 1995 (Midway, Utah).

"What to Do If the System Fails," Presentation to the Eighth Annual Victims' Conference, April 27, 1995 (Salt Lake City, Utah).

Debate against Prof. Jerome Skolnick, on *Miranda* (Boalt Hall Law School, April 13, 1995 (Berkeley, California).

Debate against Prof. Alan Dershowitz and Wendy Kamenar (Moderator, Prof. Charles Fried), on the death penalty, Harvard Law School, March 22, 1995 (Cambridge, Massachusetts).

Debate against Larry Weiss, on Congressional Modification of the

Exclusionary Rule, J. Reuben Clark School of Law, Brigham Young Univ., Mar. 16, 1995 (Provo, Utah).

"Admission of Similar Crimes Evidence in Rape and Child Molestation Cases," Presentation to the Utah Supreme Court Advisory Comm. on Rules of Evidence, February 15, 1995 (Salt Lake City, Utah).

"Admission of Hearsay in Preliminary Hearings," Presentation to the Salt Lake County District Attorney's Office, February 15, 1995 (Salt Lake City, Utah).

"A Preliminary Empirical Inquiry into the Costs of *Miranda*," Presentation to the Criminal Justice Conference, International Scholarly Conference Held on the Internet, January 12-13, 1995.

Debate against Larry Weiss, Esq., on Proposition 1-The Victims' Rights Amendment, October 26, 1994 (Park City, Utah).

"Protecting Children in Utah's Courts," Presentation to the Advocacy for Children and Families Conference, Brigham Young University, October 20, 1994 (Provo, Utah).

"Utah Search and Seizure Reform Proposals," Presentation to the Constitutional Revision Commission, September 9, 1994 (Salt Lake City, Utah).

Panel Discussion, "O.J. Simpson's Right to a Fair Trial vs. the Public's Right to Know," Sponsored by the Utah Chapter of Women in Communications, Inc., September 28, 1994 (Salt Lake City, Utah).

Debate against Gil Athay, Esq., on Victims Rights in Child Abuse Cases, at the Seventh Annual Conference of the Child Abuse Prevention Council, August 4, 1994 (Ogden, Utah).

Legal Analysis of the O.J. Simpson Preliminary Hearing, on KSL-1160 A.M., extended appearances July 1-8, 1994 (Salt Lake City, Utah).

"Empirical Research on Confession Rates in Salt Lake County," Presentation to the Univ. of Utah College of Law Faculty, July 6, 1994 (Salt Lake City, Utah).

"Utah's Victims Rights Amendment," Presentation to the Seventh Annual Victims' Conference, April 28, 1994 (Salt Lake City,

Utah).

Moderator, Tenth Annual Jefferson B. Fordham Debate, on the topic "Gun Control: Should We? Can We?", February 17, 1994 (Salt Lake City, Utah).

Debate against Kathryn Kendall, ACLU, on Constitutional Protections for Crime Victims in Utah, February 16, 1994 (Salt Lake City, Utah).

Debate against Prof. Edward Kimball, on Constitutional Protections for Crime Victims in Utah, at the J. Reuben Clark School of Law, Brigham Young Univ., February 1, 1994 (Provo, Utah).

"Balancing the Scales of Justice: A Proposed Constitutional Declaration of Rights of Utah's Victims of Crimes," Presentations to the Constitutional Revision Commission, October 8, Sept. 10, and July 9, 1993 (Salt Lake City, Utah).

"The Utah Supreme Court and the State Exclusionary Rule," Debate Against Ron Yengich for the Utah State Bar Constitutional Law Section, May 20, 1993 (Salt Lake City, Utah).

"Criminal Procedure Issues Under the Utah Constitution," Presentation to the Utah Prosecution Council's Spring Training Conference, April 15, 1993 (Cedar City, Utah).

"Has the Utah Supreme Court Gone Too Far in Creating a State Exclusionary Rule?," Debate Against Ron Yengich for the Mid-Year Meeting of the Utah State Bar, March 13, 1993 (St. George, Utah).

"Federal Search and Seizure Law: Vehicle Stops and Searches," Presentation to the U.S. Attorney/DEA/POST Narcotics Interdiction Course, February 3, 1993 (Salt Lake City, Utah).

"Doctrinal and Policy Implications of State Exclusionary Rules," Presentation to the Univ. of Utah College of Law Faculty, January 21, 1993 (Salt Lake City, Utah).

"Constitutional Issues in Evidence," Presentation to the Utah Prosecution Council's Fall Training Conference, September 16, 1992 (Brianhead, Utah).

Roundtable Discussion on the William Andrews Execution, KUED-Ch. 7 Civic Dialog Program, July 28, 1992 (Salt Lake City, Utah).



Debate against Professor Lionel Frankel, on the death penalty, at University of Utah College of Law, April 23, 1992 (Salt Lake City, Utah).

Debate against Prof. David Rudovsky, Univ. of Pennsylvania, questions by Marvin Wolfgang, on capital punishment, at Univ. of Pennsylvania Law School, November 17, 1987 (Philadelphia, Pennsylvania).

Debate against Stefan Presser, Legal Director, Pennsylvania ACLU, on capital punishment, at Temple Law School, April 9, 1987 (Philadelphia, Pennsylvania).

Debate against Richard Neufeld, New York Legal Aid, on *Miranda*, at New York Law School, April 8, 1987 (New York, New York).

Speech followed by questions from Professor Capra, at Fordham Law School, on *Miranda*, April 8, 1987 (New York, New York).

Debate against Prof. Kenneth Haas, Univ. of Delaware, on *Miranda*, at University of Delaware Law School, March 24, 1987.

Debate against Judy Goldberg, ACLU, on *Miranda*, March 13, 1987 (Washington, D.C.).

Debate against Millard Farmer, Esq., on capital punishment, at Florida State University College of Law, March 3, 1987 (Tallahassee, Florida).

13. Health: What is the present state of your health? List the date of your last physical examination.

I am in good health. Last examination - May, 2000.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or

procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

1985-85. Judge Antonin Scalia, U.S. Court of Appeals for the District of Columbia Circuit.

1985-86. Chief Justice Warren E. Burger, U.S. Supreme Court.

2. whether you practiced alone, and if so, the addresses and dates;

As a law professor at the University of Utah College of Law from 1992 to date, I have maintained a pro bono practice representing victims of crime and done some occasional legal consulting work for corporate clients.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

In 1984, after graduating from law school, I was a summer associate at Morrison and Foerster, working on various litigation matters.

Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482

After completing my clerkships with Judge Scalia (1984-85) and Chief Justice Burger (1985-86), I served as an Associate Deputy Attorney General in the United States Department of Justice from September 1986 to May 1988, providing legal advice to the Deputy Attorney General. My portfolio included constitutional, criminal justice, natural resources, and antitrust issues. I also personally briefed and argued several motions and appeals in the federal district and appellate courts (50% civil, 50% criminal).

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

From May 1988 to September 1991, I served as an Assistant United States Attorney in the United States Department of Justice. I prosecuted numerous criminal cases in the Eastern District of Virginia (for three years in the Alexandria office and one year in the Norfolk office) including personally handling (as the sole or lead prosecutor) about 17 felony jury trials to verdict and reaching plea agreements in more than 100 matters. I also defended a number of convictions on appeal in the Fourth Circuit. I was in court frequently on a weekly and sometimes daily basis, appearing before the district judges in the Eastern District of Virginia. An example of the kind of case I handled is United States v. Percival, No. 89-306-A (E.D. Va. 1989), in which I successfully prosecuted federally-licensed gun dealers for making false statements in connection with numerous straw purchases. After a five-day jury trial, the jury convicted both defendants. For cases like this one, I was recognized by the Attorney General with a Special Achievement Award. In 1990, I transferred from the Alexandria Division to the Norfolk Division to help my wife take a legal job in North Carolina.

U.S. Attorney's Office  
Eastern District of Virginia  
1101 King St.  
Suite 502  
Alexandria, VA 22314

U.S. Attorney's Office  
 Eastern District of Virginia  
 World Trade Center  
 101 W. Main Street  
 Suite 8000  
 Norfolk, VA 23510

From January 1992 to the present, I have been a member of the faculty of the University of Utah College of Law. My main teaching areas have been criminal procedure, evidence, criminal process, appellate advocacy, crime victims' rights, and criminal law. In 1997, I received the Teacher of the Year award. In 2000, I was awarded the James I. Farr Chair and served for a semester as a University Faculty Fellow. As a faculty member, I spent a number of years supervising students in our criminal law clinic, as they worked in the District Attorney's Office. I was also instrumental in arranging placements for our students at the U.S. Attorney's Office.

University of Utah College of Law  
 332 S. 1400 E.  
 Salt Lake City, UT 84112

During the same period of time, I have also donated my services as pro bono lawyer handling numerous crime victims' issues. For example, in 1997, I undertook to represent dozens of the victims of the Oklahoma City bombing to challenge a witness sequestration order directed at them. I filed a challenge to the sequestration order in the District Court (in the District of Colorado before Judge Matsch, to whom the matter had been transferred) and then took an unsuccessful appeal to the Tenth Circuit. I also provided legal advice to the victims as they successfully obtained emergency legislation from Congress to change the witness sequestration rules. I further argued on behalf of the victims in the District Court in Colorado on matters concerning victim impact statements and restitution and in the District Court in Oklahoma on matters concerning application of the federal sentencing guidelines.

In addition, for approximately the last six years, I have served as a special counsel to the civil litigation firm of Hatch, James and Dodge in Salt Lake City. Each year, I have worked on various litigation projects in connection with civil litigation. For example, I recently argued several motions in limine in U.S. District Court for

the District for Utah (Stewart, J.) in a commercial dispute concerning a covenant not to compete.

Hatch, James & Dodge  
10 W. Broadway #400  
Salt Lake City, UT 84101

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
 

1984-86.	Judicial Clerkships.
1986-88.	Policy position, U.S. Dept. of Justice.
1988-91.	Asst. U.S. Attorney.
1992-date.	Law professor; pro bono victims lawyer; legal consultant.
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.
 

1984-86.	As a law clerk, my clients were federal judges.
1986-91.	As a government lawyer, my client was the United States, in various criminal and civil cases.
1992-date.	As a pro bono litigator, my typical clients are victims of violent crimes. I also consult with some corporate clients on various constitutional issues.
- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.
 

1984-86.	As a law clerk, while I frequently attended court hearings, I never appeared in court.
1986-88.	As an Associate Deputy Attorney General, I appeared in federal court occasionally on litigation matters.
1988-91.	As an Assistant United States Attorney, I appeared in the District Court for the Eastern District of Virginia quite frequently.
1992-date.	As a pro bono litigator and consultant, I appear in court occasionally.
2. What percentage of these appearances was in:

(a) federal courts;

1986-91. 100% federal.  
1992-date. 50% federal.

(b) state courts of record;

1986-91. 0% state courts.  
1992-date. 50% state courts.

(c) other courts.

N/A

3. What percentage of your litigation was:

(a) civil;

1986-88. 30% civil.  
1988-91. 5% civil.  
1992-date. 15% civil.

(b) criminal.

1986-88. 70% criminal.  
1988-91. 95% criminal.  
1992-date. 85% criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As an Assistant United States Attorney, I tried approximately 17 felony criminal cases to verdict. I served as sole counsel on approximately 12 of these cases, and lead counsel on 4, and co-counsel on 1. I also tried numerous misdemeanor cases to verdict.

5. What percentage of these trials was:

(a) jury;

All but one of the felony trials were jury trials.

(b) non-jury.

One of the felony trials was a non-jury trial. All of the misdemeanor trials were bench trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Oklahoma City bombing -- various crime victims' issues.

This case was argued before the U.S. District Courts (D. Colorado and D. Oklahoma) and briefed before the U.S. Court of Appeals for the Tenth Circuit. The trial court caption is United States v. McVeigh, No. 96-CR-68-M (D. Colo. 1996).

The United States was represented by Sean Connelly, United States Dept. of Justice, 1961 Stout Street, Suite 1200, Denver, CO 80294 (303) 454-0361. Timothy McVeigh was represented by Stephen Jones, 114 East Broadway, Suite 1100, Enid, OK 73702 (405) 242-5500. Terry Nichols was represented by Ronald G. Woods, 1120 Lincoln, Suite 1308, Denver, CO 80203 (303) 831-4059.

My participation in this case involved pro bono representation of various victims and surviving family members of the bombing. My initial involvement concerned a challenge to a witness sequestration order entered by Judge Richard Matsch, which excluded victims from watching all court proceedings even where their only role was to provide victim impact testimony at the death penalty phase. After Judge Matsch denied my motion to reconsider his ruling, I filed both an appeal and a petition for mandamus in the Tenth Circuit. The Justice Department joined our action. The Tenth Circuit rejected our arguments, concluding that we lacked standing to pursue the issue. United States v. McVeigh, 106 F.3d 325 (10th Cir. 1997). At the urging of my clients, Congress then passed a new law, superceding the law Judge Matsch had relied upon. Victims' Rights Clarification Act of 1998, Pub. L. 105-6 (codified at 18 U.S.C. § 3510). I then

filed various motions concerned with the implementation of that new law at the trial of Timothy McVeigh.

After the conviction of McVeigh and Terry Nichols, I filed a brief and argued before Judge Matsch on behalf of the victims being able to provide victim impact testimony at Nichols' sentencing. Judge Matsch agreed with my argument.

During this hearing, I also raised the issue of restitution. Judge Matsch set a new hearing on the restitution issue, and I briefed and argued on behalf of a \$14.5 million restitution order being entered against Terry Nichols. Judge Matsch agreed to enter such an order, although he premised the order on old restitution law rather than the new law, the Mandatory Victims Restitution Act, which I argued applied. The Tenth Circuit affirmed the restitution order, agreeing with my argument that the new law applied. United States v. Nichols, 169 F.3d 1255 (10th Cir. 1999).

I also briefed and argued in the District of Oklahoma that the proper sentence for Michael Fortier (who was indirectly connected with the bombing) required a substantial upward departure from the otherwise applicable federal sentencing guideline in view of the tremendous damage done by the bombing. The district court agreed. Tenth Circuit affirmed, but questioned whether the district court had authority to allow participation of victims' counsel at sentencing. United States v. Fortier, 242 F.3d 1224 (2001).

I served as lead counsel on all aspects of the litigation, assisted by Bob Hoyt, Reg Brown, Karan Bhatia, Arnon Siegel and other lawyers at Wilmer, Cutler, and Pickering in Washington, D.C.

2. United States v. Dickerson, 120 S.Ct. 2326 (2000).  
United States v. Dickerson, 166 F.3d 667 (4th Cir. 1999).

This case was argued before the United States Supreme Court and the U.S. Court of Appeals for the Fourth Circuit (Williams, Michel, Kaiser (sitting by designation)).

The United States was represented by Solicitor General Seth Waxman and Assistant to the Solicitor General Lisa S. Blatt, Department of Justice, Washington, DC 20530 (202) 514-2217. The defendant was represented by James E. Hundley, Briglia & Hundley, The Mosby Professional Building, 10560 Main Street, Suite 314, Fairfax, VA 22030 (703) 385-8005.

I represented the Washington Legal Foundation on a pro bono basis. This case involved a statute passed by Congress, 18 U.S.C. § 3501, that required the admission of voluntary confessions in criminal cases. The statute had not been applied



in the district court, and I successfully argued to the Fourth Circuit that the statute required the admission of Mr. Dickerson's non-Mirandized incriminating statement implicating him in a string of armed bank robberies. The U.S. Supreme Court agreed to review the case. Because neither party was defending the judgment below, Chief Justice Rehnquist appointed me to brief and argue the case before the Court. After argument, the court reversed (7-2), finding the statute unconstitutional. I served as lead counsel on all aspects of the litigation.

3. State v. Patrick Casey, No. 991300457 (3d Dist. Utah 2000).

The State of Utah is represented by J. Frederic Voros, Jr., Asst. Attorney General, P.O. Box 140854, Salt Lake City, UT 84114 (801) 366-0180. Patrick Casey is represented by Walter F. Bugden, Jr., 623 East 2100 South, Salt Lake City, UT 84106 (801) 467-1700.

In this case I represent, on a pro bono basis, a juvenile victim of sexual assault M.R., by and through his guardian, Cynthia F. Casey. Defendant Patrick Casey was charged with first degree sexual assault of M.R., and arranged a plea bargain to a misdemeanor offense. The victim was not notified of the plea bargain, in violation of the Utah Victims' Bill of Rights, Utah Const., article I, § 28. I filed a motion to set aside the plea, which the trial court (David Young, J.) denied. I then filed an appeal in the Utah Court of Appeals, with a request for certification of the Utah Supreme Court as an issue of exceptional importance. The request explained that this case would present an issue of first impression in Utah on the ability of crime victims to challenge plea bargains. The Court of Appeals granted the request and certified the case to the Utah Supreme Court. In re M.R. ex rel. State v. Casey, No. 200001067 (Utah Ct. Apps. Jan. 18, 2001). The matter is currently pending before the Utah Supreme Court, which has rejected defendant's motion for summary dismissal. In re M.R. ex rel. State v. Casey, No. 20001067 (Utah Feb. 13, 2001). I have been the only lawyer on the case.

4. Cronan v. Cronan, No. 99-0378 (R.I. 2001).

Diane Cronan is represented by S. Josh Macktaz, 127 Dorrance Street, 2nd Floor, Providence, RI 02903. John J. Cronan is represented by John A. MacFayden, The Remington Building, 91 Friendship Street, Providence, RI 02903 (401) 521-5130. The State of Rhode Island is represented by Attorney General Sheldon Whitehouse and Aaron L. Weisman, Dept. of Attorney General, 150

South Main Street, Providence, RI 02903 (401) 274-4400.

In this case I represent, on a pro bono basis, The National Crime Victims Law Institute, the Rhode Island Coalition Against Domestic Violence, the National Alliance of Sexual Assault Coalitions; and the Pennsylvania Coalition Against Rape in the Rhode Island Supreme Court. This case involves a victim of domestic abuse, Diane Cronan. She instituted a "private prosecution" against her abuser, John Cronan. The trial court allowed the prosecution to proceed pursuant to Rhode Island law, and convicted the abuser. The defendant has appealed to the Rhode Island Supreme Court, arguing that a private prosecution by a crime victim violates the federal and state constitutions. The Rhode Island Supreme Court granted our motion to file an amicus brief, but denied our motion to participate in the oral argument. Our amicus brief provides detailed historical analysis about the right of crime victims to bring their own criminal actions. The brief further explains the importance of private prosecutions in holding domestic abusers accountable for their actions. Because I am not admitted in Rhode Island, Eugene G. Bernardo II of Partridge, Snow & Hahn is serving as local counsel. Professor Douglas E. Beloof and Gina McClard of the National Crime Victims Law Institute are also on our brief. I am the principal author of the brief and would have argued the matter if our motion to participate in oral argument had been granted.

5. United States v. Barsanti et al., No. CR-89-\_\_\_\_-A (E.D. Va. 1989) (Bryan, J.), aff'd, 943 F.2d 428 (4th Cir. 1991), cert. denied, 503 U.S. 936 (1992).

I prosecuted this case, and was the sole prosecutor on the matter. Adolph Barsanti was represented by F. Michael Ballard (current whereabouts unknown). Harold Kline was represented by Robert P. Watkins, Williams & Connolly LLP, 725 Twelfth Street, N.W., Washington, District of Columbia 20005-5901, (202) 434-5000. Allen Griffey was represented by Michael S. Lieberman, Dimuro, Ginsberg & Mook, 908 King St Ste 200, Alexandria, Virginia 22314-3067, (703) 684-4333.

This case was brought against three defendants - a real estate agent and two investors - who defrauded a HUD program designed to provide low interest loans to first time home buyers. The HUD program provided low interest loans to owner occupants of housing units. The defendants used a series of strawman purchases to qualify for the loans, even though they were not the owner occupants of the building.

After a three-day jury trial before Judge Albert Bryan, the defendants were convicted of various counts relating to

conspiracy and false statements and sentenced to prison terms and fines. The Fourth Circuit affirmed the convictions.

6. United States v. Percival et al., CR-89-306-A (E.D. Va. 1989) (Cacheris, J.), aff'd, 932 F.2d 964 (table), 1991 WL 75229 (4th Cir. 1991), cert. denied, 502 U.S. 919 (1991).

I prosecuted this case, and was the lead prosecutor on the matter (along with co-counsel Marcus Davis). James Chapman was represented by Richard J. Leon, Vorys, Sater, Seymour and Pease LLP, 11th Floor, 1828 L Street NW, Washington, District of Columbia 20036 202) 467-8860. Donald P. Percival was represented by Tom Hylden and Leonard C. Greenebaum, Baker & Hostetler, L.L.P., Washington Sq, Suite 1100, 1050 Connecticut Ave NW, Washington, D.C. 20036-5304.

This case involved a federally licensed dealer in firearms (Percival) and his associate (Chapman) who sold dozens of handguns to two confessed drug dealers in the District of Columbia. The transactions were strawman purchases in which girlfriends of the drug dealers, who resided in Virginia, would sign the federal forms, while the purchases were concluded by the drug dealers. This modus operandi was confirmed by several undercover purchases by ATF agents. Following a five day jury trial before Judge James Cacheris, the defendants were convicted of conspiracy and unlawful firearms sales. The defendants were sentenced to prison terms, although the district court found that some of the counts involved only misdemeanor sentences. United States v. Percival, 727 F. Supp. 1015 (E.D. Va. 1990). The Fourth Circuit affirmed the convictions.

7. MK Gold v. MK Corporation, No. 96-CV-935S (D. Utah 2001).

I assisted Brent O. Hatch and Mark R. Clements of Hatch, James and Dodge, in representing Washington Group (formerly Morrison Knudsen Corp.) in a \$100 million action brought against it by MK Gold and Leucadia Corp. MK Gold was represented by David A. Greenwood, VanCott, Bagley, 50 S. Main S. #1600, Salt Lake City, UT 84145 (801) 532-3333. Leucadia Corp. was represented Alan L. Sullivan, Snell & Wilmer, 15 W. South Temple #1200, Salt Lake City, UT 84101 (801) 532-7300.

This case involved an alleged violation of a covenant not to compete in the gold industry, entered into by Morrison Knudsen and MK Gold. Leucadia purchased MK Gold in 1995 in reliance on the covenant not to compete, and then alleged that Morrison Knudsen violated the agreement. Their action claimed more than \$100 million in damages, based on an expert calculation of the value of gold projects that MK Gold never received. I joined the

team working on the case about two months before trial. My main focus was on evidentiary issues, including drafting motions in limine on critical pieces of evidence. For example, I drafted a motion to exclude evidence concerning several preliminary gold projects that were never completed and to include evidence concerning wrongdoing in the Salt Lake Olympic bid effort by MK Gold's President. I argued several of these motions in front of Judge Stewart. I also prepared and responded to objections to exhibits filed pursuant to Rule 26(a)(3)(C) of the Federal Rules of Civil Procedure. Finally, I prepared to handle the challenge to the admissibility of the plaintiffs' expert testimony on damages: the Daubert hearing. My motion for a Daubert hearing was granted, and was set for the afternoon of the third day of trial. One hour before the Daubert hearing, after the judge (Stewart, J.) made comments indicating his concern about the admissibility of the testimony, the case was settled. Because of my class schedule at the University of Utah, I did not participate in the three days of jury trial before settlement, but instead handled the discrete issues outlined above, as well as providing advice on numerous other trial-related issues.

8. United States v. Leroy Robinson, CR-89-215-A (E.D. Va. 1990) (Ellis, J.), aff'd, 924 F.2d 1053 (table), 1991 WL 9902(4th Cir. 1991).

I represented the United States as the lead prosecutor, along with co-counsel Mark J. Hulkower. Leroy Robinson was represented by David Thomas Williams, William B. Cummings, P.C., 112 South Pitt Street, Alexandria, VA 22314 (703) 836-7997.

This case involved a string of armed bank robberies committed in the Northern Virginia area by the yellow gloved bank robber. At trial, I proved that the defendant had committed various robberies with the same modus operandi -- specifically, that he had entered the banks wearing a mask and yellow gloves, had vaulted the counters, collected cash from the teller drawers while discarding die packs and bait money. At the conclusion of the multi-day trial, the jury found the defendant guilty of conspiracy and three counts of bank robbery by intimidation. He was sentenced to 24 years in prison. The Fourth Circuit affirmed the convictions on two of the three counts of bank robbery, but reversed the third on the grounds that there was insufficient evidence of intimidation.

9. State v. Beltran-Felix, 922 P.2d 30 (Utah Ct. App. 1996).

The State of Utah was represented by J. Frederic Voros, Jr., Asst. Attorney General, P.O. Box 140854, Salt Lake City, UT 84114

(801) 366-0180. Defendant Emilio Beltran-Felix was represented by Kent E. Snider, Snider & Pace, P.C., Suite 102, 2568 Washington Blvd., Ogden, UT 84401-3114, (801) 394-2673.

This case involved a grandmother, who was raped in front of her co-workers during the robbery of a jewelry store. She later testified against the defendant and attended the trial, as was her right under the Utah Victims' Rights Amendment, Utah Const., art. I, § 28. On appeal to the Utah Court of Appeals, the defendant argued that the Amendment violated federal constitutional protections. I filed an amicus brief supporting the victim's right to attend the trial on behalf of the victim, the Utah Council on Victims, the National Organization for Victim Assistance, the National Victim Center, the Salt Lake Chapter of Mothers Against Drunk Driving, the Second District Victims' Rights Committee, and a number of other interested victims' and law enforcement organizations. I served as lead counsel, and affiliated with co-counsel Scott Daniels for logistical and legal support. The Utah Court of Appeals granted our motion to file the brief and to participate in the oral argument. Ultimately, the court of appeals agreed with our submission and that of the state that the defendant's rights had not been violated. See 922 P.2d at 32-35. I believe that this was the first appellate case ruling on the validity of provisions in the Utah Victims' Rights Amendment.

10. State v. Pledger, 896 P.2d 1226 (Utah 1995).

The State of Utah was represented by Kevin Murphy, Asst. Attorney General, P.O. Box 140854, Salt Lake City, UT 84114 (801) 366-0180. Jerry Pledger was represented by Randall T. Gaither, 321 South 600 East, Salt Lake City, UT 84102-4013, (801) 531-1990.

In this case, a magistrate bound a defendant over to stand trial based in part on hearsay evidence, which avoided the need for a young boy to testify about his sexual abuse at the preliminary hearing. The Utah Supreme Court agreed to review the issue on interlocutory appeal. I filed an amicus brief for the Utah Council on Victims, the Salt Lake Rape Crisis Center, the Statewide Association of Public Attorneys (SWAP), and other victims and law enforcement groups arguing that victims should not be forced to testify at preliminary hearing. The brief recounted psychological and empirical evidence of the traumatizing effects on victims from such testimony and of the cost to the system in turning preliminary hearings into mini-trials. Ultimately, the Supreme Court ruled that the magistrate had acted properly in basing part of the bind-over decision on

hearsay evidence. 896 P.2d at 1229.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I have provided significant legal advice to the National Victims' Constitutional Amendment Network on the drafting of the proposed Victims Rights Amendment (VRA). The VRA would add a Bill of Rights for Crime Victims' to the United States Constitution. My legal advice has, on occasion, been relayed to members of Congress working on the amendment.

For most of the last seven years, I have served as the Chair of the Legislative Committee of the Utah Council on Crime Victims. In that capacity, I have provided drafting advice on numerous pieces of legislation, including the Utah Victims Rights Amendment.

For about seven years, I have served as a member of the Utah Supreme Court's Advisory Committee on Rules of Criminal Procedure. As a member, I have provided advice on drafting the Utah Rules of Criminal Procedure.

I have also provided pro bono legal advice to various crime victims in Utah who have had legal difficulties with the criminal justice system and legal referrals to crime victims outside of Utah.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The University of Utah College of Law will continue to pay salary of approximately \$9100/month (gross), through acceptance of my judicial appointment. I am currently discussing with the Dean possible arrangements to continue teaching any partially-completed classes and future classes. I also have a retirement account (with TIAA-CREF) from the University of Utah.

Oxford University Press will pay me \$10,000 for writing a chapter in book on legal issues surrounding the death penalty, to be completed by about September 1, 2001.

Envirocare is continuing to pay me for legal work in connection with a state taxation issue. The amount to be paid will be regularly hourly rate, for an anticipated total of roughly \$3500 through September.

Harris County, Texas, will pay me \$400 for preparing an expert witness affidavit, which will be received in July, 2001.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will attempt to ensure that all litigants believe their case is being decided by a fair and impartial judge. I will pay close attention, of course, to the Code of Conduct for United States Judges, with particular emphasis on issues concerning potential financial conflicts of interest, past representation of clients, and bias.

With regard to financial conflicts of interest, the most likely potential conflict of interest might be a suit filed by or against the University of Utah. I would plan to recuse myself from such matters (with the possible exception of what I

understand to be the separate entity of the University of Utah Medical Center, with which I have never had any affiliation). I would also plan to recuse myself initially for an appropriate period of time from working on matters involving the law firm of Hatch, James and Dodge. Although I have never had a financial interest in the firm, I handled various projects as special counsel. My wife is also currently employed by Sandy City. I would plan to recuse in cases involving Sandy City during her tenure.

With respect to past clients that I have represented in any capacity, I would plan to recuse myself from ruling on cases involving them for an appropriate period of time.

In general, I would plan to recuse myself in cases in which it might appear, for whatever reason, that I might suffer from some bias.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I hope to continue a relationship with the University of Utah College of Law, in which I would teach classes to law students on subjects to be arranged with the Dean.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member, Criminal Justice Issues Advisory Committee, Bush Campaign (2000) (occasional legal advice to the campaign on criminal



justice issues).  
 Member, Law Professors for Bush (2000).  
 Member, Law Professors for Dole (1996).  
 Member, Law Professors for Bush (1992).  
 Lamont Tyler Campaign, Utah House of Representatives (1996)  
 (door-to-door canvassing).  
 Statewide Director of Campaign in Support of Proposition 1, the  
 Bill of Rights for Crime Victims (Utah 1994) (responsible for  
 media campaign and public policy issues).

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	11,600	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	1,200	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others	400	Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	101,000
Real estate owned-add schedule	300,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	35,000		
Cash value-life insurance	300		
Other assets itemize:			
TIAA-CREF Retirement Account	138,000		
Sandy City IRA (wife)	923		
Utah Retirement IRA (wife)	4,787	Total liabilities	101,000
Univ. of Utah IRA	9,000	Net Worth	400,210
Total Assets	501,210	Total liabilities and net worth	501,210
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	--	Are any assets pledged? (Add schedule)	--
On leases or contracts	--	Are you defendant in any suits or legal actions?	--
Legal Claims	--	Have you ever taken bankruptcy?	--
Provision for Federal Income Tax	--		
Other special debt	--		

SCHEDULE OF SECURITIES

Albertson's Common Stock   appx. 40 shares   value \$1200

SCHEDULE OF REAL ESTATE OWNED

Residence - appx value \$300,000

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have spent hundreds of hours over the last nine years providing pro bono representation to victims of crime.

My most significant case involved representing victims of the Oklahoma City bombing. From 1996 to date, I represented various victims on issues, including issues relating to their ability to watch the trial, restitution to prevent Terry Nichols from profiting from his crimes, and an appropriate sentence for Michael Fortier. I spent at least 1000 hours working on this case.

I am currently representing a twelve-year-old boy victimized by sexual assault. The boy was denied his right to speak in opposition to plea bargain, in State v. Casey, No. 991300457 (3rd Dist. Ct. 2000). My appeal in this case has been certified by the Utah Court of Appeals to the Utah Supreme Court as one involving issues of exceptional importance. I have spent at least 200 hours working on this case.

I am also currently serving as pro bono counsel for the National Crime Victims' Law Institute; the Rhode Island Coalition Against Domestic Violence; National Alliance of Sexual Assault Coalitions, and other victims groups, in Cronan v. Cronan, No. 99-0378 (R.I. Supreme Court Mar. 2001). In the case, I have filed an amicus brief arguing that a battered woman properly initiated private criminal charges against her husband. I have spent at least 100 hours working on this case. The Rhode Island Supreme Court heard arguments in the case in May and a decision is expected shortly.

I was pro bono counsel for amicus Utah Council on Victims, rape victim, and allied organizations (such as the Salt Lake Rape Recovery Center), in State v. Beltran-Felix, 922 P.2d 30 (Utah App. 1996) (arguing that rape victim was properly permitted to attend trial of her rapist). I spent at least 80 hours working on this case.

I was pro bono counsel seeking to intervene to protect the rights of a nine-year-old victim of sexual assault, C.M., asserting victim's right to a speedy trial, State v. Saunders, No. 96-1900945PS (3rd Dist. Ct. 1996). I spent at least 40 hours working on this case.

I was pro bono counsel seeking to intervene on behalf of a seven-year-old victim of sexual assault, G.L., asserting victim's right to a speedy trial (first such argument in Utah), in State v. Burr, No. 96-1901030 (3rd Dist. Ct. 1996). I spent at least 40 hours working on this case.

I was pro bono counsel for amicus Utah Council on Victims and ten other allied organizations, in State v. Pledger, 896 P.2d 1226 (Utah 1995), in which I argued that crime victims should not be forced to testify at preliminary hearings. I spent at least 80 hours working on this case.

I frequently provide legal advice to crime victims on a pro bono basis on issues concerning their treatment in the criminal justice system. For example, the National Organization for Victim Assistance frequently refers crime victims to me for consultations. As a matter of principle, I have never charged a crime victim in any way for legal representation.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No such memberships.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no such judicial selection commission.

My experience in the judicial selection process is as follows: In December 2000, I met briefly with Senator Orrin Hatch and advised him of my interest in serving as a judge. In April 2000, I interviewed with the White House Counsel's office concerning the position. About one week later, I was advised by the White House that I had been selected for nomination, pending FBI background check. I then completed the various forms connected with the background check and participated in an FBI interview. After the FBI completed its background check, my

nomination was submitted to the Senate. I conferred briefly with Department of Justice personnel on questions of form concerning the paperwork associated with the nomination.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No such discussion.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The question of the proper role of the judiciary in vindicating protected rights is an important and complex one. Clearly courts should not overstep the proper boundaries of separation of powers, but at the same time they must enforce the Constitution and the laws. The boundaries of separated powers require that the judiciary undertake the narrow judicial role of resolving particular cases and controversies, while leaving the broad, policy-making role to the political branches. Standing and ripeness doctrines provide further limits on the appropriate exercise of judicial power. Finally, Congress and the President have an important role to play in establishing the reach of judicial authority by setting jurisdictional boundaries for federal courts.

AO-10 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

*Report required by the Ethics in  
Government Act of 1976, as amended  
(5 U.S.C. App. 4, Sec. 101-112)*

1. Person Reporting (Last name, first, middle initial) Cassell, Paul G.		2. Court or Organization District Court - Utah	3. Date of Report 06/24/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee		5. Report Type (check type) X Nomination, Date 06/19/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 06/24/2001
7. Chambers or Office Address 332 S. 1400 E. Univ. of Utah College of Law Salt Lake City, UT 84112		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
<p><i>IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</i></p>			

## **I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Professor	University of Utah College of Law
2 Special Counsel	Hatch, James & Dodge
3 Executive Board	National Victims Constitutional Amendment Network

## **II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 6/24/01	University of Utah College of Law - salary to continue to appointment; possible teaching assignments after appointment by mutual agreement.
2 2000-01	Hatch, James & Dodge -- contingency fee case work already performed.
3 06/15/01	Oxford University Press - \$10,000 for completing chapter of a book; work to be completed by about September 1, 2001

## **III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (your, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1		
2 2000	University of Utah College of Law -- salary	95,765
3 06-24-01	University of Utah College of Law -- salary year 2001 to date of report	50,600
4 2000	Hatch, James & Dodge -- legal work as a special consultant	8,736



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Cassell, Paul G.	05/24/2001

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of instructions.)*

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1		Exempt
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of instructions.)*

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1		Exempt	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2	NONE		
3			
4			
5			
6			

\* VAL CODES: L=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Cassell, Paul G.				Date of Report 05/24/2001			
<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type Code (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type Code (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
					(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 Albertson's Stock	A	Dividend	J	T	Exempt				
2 University of Utah Credit Union	A	Interest	J	T					
3 TIAA-CREF Retirement Account from Univ. of Utah		None	H	T					
4									
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15									
16									
17									
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I2=\$5,000,001 or more E=\$15,001-\$50,000									
<b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more									
<b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Cassell, Paul G.	Date of Report 06/24/2001
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Cassell, Paul G.	Date of Report 06/24/2001
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## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Faculty Advisor	University of Utah College of Law Federalist Society Chapter
5	Chair, Violent Crime etc. Subcommittee, Criminal Law Practice Group	Federalist Society
6	Advisory Board	Salt Lake City Lawyers Chapter, Federalist Society
7	Advisory Board	Sutherland Institute
8	Advisory Board	Crime Watch
9	Chair, Legislative Committee	Utah Council on Victims of Crime
10	Member	Utah Supreme Court Advisory Committee on Rules of Ethics
11	Consultant	Prosecutor's Offices, U.S. Government and elsewhere

## PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	06-24-01	Hatch, James & Dodge -- legal work as a special consultant	25,920
6	2000	Federalist Society -- honoraria for speeches	3,500
7	9-15-00	University of Pittsburgh -- honorarium for speech	1,000
8	2001	Federalist Society -- Honoraria for speeches	1,000
9	10-15-00	University of Houston - honorarium for speech	2,000
10	4-25-00	University of Toledo -- honorarium for speech	5,000
11	7-1-00	Wall Street Journal -- payment for column	350
12	8-17-00	U.S. Army -- Expert Witness Fee	400
13	2000	Sandy City Attorney's Office -- spouse salary	
14	2001	Sandy City Attorneys Office - Spouses Salary	
15	2001	Legal Consultant -- Envirocare	5,000
16	2001	City of Escondido - legal consultant	400
17	2001	Dept. of Defense - Expert Witness Fee	400

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting
Cassell, Paul G.

Date of Report
06/24/2001

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

6/24/01

## Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

Judge Davis, do you have introductions?

**STATEMENT OF LEGROME DAVIS, NOMINEE TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Judge DAVIS. Yes, sir. I am pleased to introduce my wife, Sue; my son, Chris; my daughter, Kate; my oldest brother, who will forever be my big brother, Jerome; and a number of friends: Zak Rhahiem, Professor Kay Harris, Nancy Gist, the former director of BJA; Sarah Hart, the current director of NIJ; and in the back, my court officer, Donna Croce, and one of the prosecutors who was with me for a number of years, Mr. Kesha Nair.

[The biographical information of Judge Davis follows.]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Legrome Derek Davis
2. **Position:** State the position for which you have been nominated.  
  
United States District Court, Eastern District of Pennsylvania.
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
692 City Hall; Philadelphia, PA 19107; 215-686-7946/47.
4. **Birthplace:** State date and place of birth.  
  
Columbus, Ohio; July 6, 1952.
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
I married Susan Slater on July 30, 1978. My wife is currently the Program Director for the Germantown Y.W.C.A., a non-profit community entity. Her business address is: 5820 Germantown Avenue; Philadelphia, PA 19144. I have two dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
I attended Rutgers-Camden School of Law from September 1973 until May 1976. I received a Juris Doctorate degree in May 1976. I attended Princeton University from September 1969 until May 1973. I received a Bachelor's of Arts Degree in May 1973.
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.  
  
August 1998-present: Justice Management Institute; 1900 Grant Street, Suite 630, Denver, Colorado; consultant.

1998, Member, Advisory Board, National Judicial College, The Changing Role of the Judiciary (selected as a member of the Advisory Board to assist in planning a course on the Changing Role of the Judiciary.)

1996-1998: Member, Board of Directors, The Reading Room (an adult education enterprise.)

1994-present: Member, Board of Directors, Giving of Self Partnership (A coalition of African-American ministers and community leaders engaged in the construction and operation of a community center.)

August 1990-present: American University School of Public Affairs; Suite 660, 4000 Brandywine Street, NW Washington, D.C. 20016; consultant.

1989 until 1994 (approximate): Temple University School of Law; 1719 N. Broad Street, Philadelphia, PA 19122; Instructor, Trial Advocacy Program.

November 1987-present: First Judicial District of Pennsylvania; Judge, Court of Common Pleas; 369 City Hall; Philadelphia, Pa. 19102.

July 1987- November 1987: Ballard, Spahr, Andrews & Ingersoll; 1735 Market Street, 51st floor; Philadelphia, PA 19103; associate attorney.

June 1987: Office of General Counsel for the University of Pennsylvania; 34th and Walnut Streets; Philadelphia, PA; attorney.

March 1987-May 1987: I was a candidate in the judicial elections.

October 1981-March 1987: Office of the District Attorney; 1421 Arch Street; Philadelphia, PA; Assistant District Attorney.

September 1980-October 1981: Pennsylvania Crime Commission; 527 E. Lancaster Avenue; Saint Davids, PA; attorney.

May 1977-September 1980: Office of the District Attorney; 1421 Arch Street; Philadelphia, PA; Assistant District Attorney.

February 1977-May 1977: Camden County Community College; Fifth and Broadway Streets; Camden, New Jersey, Evening Administrator.

July 1976-December 1976: Hahn Well Servicing Company; Edgerton, Wyoming; oil field laborer.

September 1975-May 1975: Smith, Stratton, Wise & Heher; Palmer Square; Princeton, New

Jersey; legal intern.

June 1975-August 1975: Office of the District Attorney; 1421 Arch Street; Philadelphia, PA; legal intern.

June 1974-August 1974: Fulbright and Jaworski; Houston, Texas; legal intern.

June 1973-August 1973: Goodyear Tire Manufacturing Company; Topeka, Kansas; laborer.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the United States Military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

(a) In May 2001, the Philadelphia Common Pleas Board of Judges awarded me an exceptional service award.

(b) In August 2000, I was selected by the United States Department of State for participation in the State Department's "Speakers Program." For two weeks, I addressed members of the judiciary of the Republic of Kenya on justice system improvement, particularly in the area of case processing systems. It was my pleasure to speak with the Kenya Supreme Court as well as members of the intermediate appellate courts and the trial bench.

(c) In July 2000, I received the Golden Crowbar Award from the Pennsylvania State Trial Judges Association. This award is made once annually to the single Pennsylvania trial judge who has made the most significant contribution to the administration of justice in the preceding calendar year. This is the highest recognition awarded by the Pennsylvania State Trial Judges Association.

(d) In January 1999, I received the Martin Luther King, Jr. Award from the Black Law Students Association of Rutgers School of Law-Camden in recognition of contributions to the legal profession.

(e) In November 1998, I received the Thurgood Marshall Award from the Criminal Justice Section of the Philadelphia Bar Association for service to the legal profession.

(f) In 1998, I received a certificate of appreciation from the President of American University for "demonstrated commitment to the improvement of justice administration in the United States and distinguished contributions ...to the School of Public Affairs."

(g) In 1997, I received a special commendation from the Attorney General of Pennsylvania



for service on the Attorney General's Policy Council on Violence Prevention.

(h) In 1997, I received a certificate of appreciation from the Chief Justice of the Pennsylvania Supreme Court in recognition of contributions to the Pennsylvania Futures Commission.

(i) I was selected to participate in the 1997 White House Conference on Hate Crimes. I was one of two judges chosen to participate in this important initiative.

(j) I was selected by the National Institute of Justice as a participant in the June 1997 "Symposium on the 30th Anniversary of the President's Commission on Law Enforcement and the Administration of Justice." Only a small number of judges from across the country were chosen to participate in this interdisciplinary symposium.

(k) In March 1997, I was one of ten criminal justice professionals (and the only judge) selected by the United States Department of Justice and the Vera Institute of Justice to meet with Republic of South Africa Minister of Justice Dr. A. M. Omar to provide advice in the development of an effective and fair pretrial release system.

(l) In March 1996, I participated in a three-day conference sponsored by the Bureau of Justice Assistance (BJA), a division of the United States Department of Justice. BJA invited twenty criminal justice professionals (District Attorneys, Defenders, Supreme Court Justices, Judges, Chief Probation Officers and academics) to participate in an interactive dialogue geared toward ensuring that future BJA future funding priorities considered the views of practitioners.

(m) In February 1995, at the request of the National Judicial College, I participated as a member of a National Judicial College Advisory Board in the development of a curriculum on "Building Effective Management Teams in the Courts." Although I was asked to serve as a faculty member for this course in January 1996, my commitments to my court would not permit me to do so.

(n) In October 1994, Fraternal Order of Police Lodge 92 presented me a lifetime membership and a separate award in recognition of "outstanding service to law enforcement."

(o) In 1992, the Philadelphia Coalition for Victim Advocacy selected me as the recipient of their Victim Advocacy Award.

(p) In 1992, Philadelphia Mayor Rendell appointed me Chairperson of a recently-established Task Force on Alternatives to Incarceration.

(q) The Judicial Study Committee received the Golden Crowbar Award from the Pennsylvania State Conference of Trial Judges in 1990 for its work in examining the structure of the Philadelphia Courts and in developing socially responsible strategies for the future. I

am one of the nine judges who worked on this project for two years, and our final report still serves as the blueprint for Philadelphia court reform. I take special pride in this collective award as the Judicial Study Commission was created by the then-Administrative Judge for the narrow purpose of examining the impact of the December 1987 changes to the Pennsylvania speedy trial rule. As a result of our collective observations and concerns regarding the management and direction of the court, we began to scrutinize our institution's procedures, policies, facilities, and administrative structures.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

I am presently associated with, or was previously associated with, the following bar associations and professional societies:

(a) Member, Advisory Board, National Judicial College, The Changing Role of the Judiciary, 1998 (selected as a member of the Advisory Board to assist in planning a course on the Changing Role of the Judiciary).

(b) Peer Review Panelist, Bureau of Justice Assistance, United States Department of Justice, 1997-2000 (selected as a local practitioner eligible to review funding applications from other jurisdictions and evaluate technical and funding merit).

(c) Peer Review Panelist, National Institute of Justice, United States Department of Justice, 1996-1997 (selected as a local practitioner eligible to review funding applications from other jurisdictions and evaluate technical and funding merit).

(d) Member, Pennsylvania Attorney General's Council on Violence Prevention, 1996-1997.

(e) Member, National Institute of Justice, Professional Development Advisory Board, Pretrial Services Practices Project, 1996-1999.

(f) Member, National Association of Court Managers, Caseflow Management Curriculum Committee, 1996-1999.

(g) Member, National Bar Association, Judicial Council, 1996-1998.

(h) Member, Pennsylvania Futures Commission, 1995-2000: This entity, sponsored by the Pennsylvania Supreme Court, the Pennsylvania Bar Association and the Administrative Office of the Pennsylvania Courts, was charged with developing a strategic plan for preparing Pennsylvania courts for the anticipated realities we will collectively face in the year 2020. I was co-chair of the Criminal Justice Subcommittee.

(i) Member, Pennsylvania Crime and Delinquency's (PCCD) Corrections Policy Committee 1995-1996: This committee, comprising three judges, high level administrators, District

Attorneys and legislators from across the Commonwealth, was charged with identifying structural and operational impediments to the orderly functioning of state and local criminal justice systems and recommending policies to address those impediments. I served as Co-Chair of the Adult Criminal Justice Subcommittee.

(j) Expert Field Reviewer, Center for Substance Abuse and Treatment, "Treatment Improvement Protocol: Integrating Alcohol and Drug Abuse Treatment with Alternative Case Processing in the Justice System," 1995.

(k) Member, Clark Foundation Steering Committee, 1993-1994: This committee, a precursor to the PCCD Corrections Policy Committee, consisted of two judges and five state criminal justice agency leaders. Our objective was to further the development of rational, safe and resource-sensitive criminal justice policies.

(l) Member, Task Force on Racial Bias in the Courts, 1993 to 1996: It has been my privilege to serve as a member of two separate task forces charged with identifying potential racial bias in the courts and developing strategic plans to address actual or potential bias. I was a member of the Executive Committee of the 1996 Task Force.

(m) Member, Apothaker Award Committee, 1991 to 1996: This Bar Foundation Committee annually awards a financial grant to the single individual or entity that has contributed most significantly to the concept of equal justice over the course of the last year.

(n) Member, Jenkins Law Library Advisory Committee, 1990-1993.

(o) Member, Greater Philadelphia Urban Affairs Coalition, Crime and Justice Task Force, 1990-1992: This Committee consisted of business, civic, religious, and judicial leaders and had as its principal mission the systematic examination of the criminal justice system with the vision of improving its day-to-day functioning.

(p) Member, Advisory Board, American Bar Association, "Project on Drug Night Courts: Developing a Prototype," 1991-1992: This project examined the operation of the Chicago Night Drug Courts, identifying strengths and weaknesses with an eye toward national applicability.

(q) Member, Pennsylvania District Attorneys' Association, circa 1977-1987.

I have chaired the following professional committees:

(a) Pennsylvania Commission on Crime and Delinquency, Corrections Policy Committee, Co-chair, Criminal Justice Subcommittee (1995-1996).

(b) Pennsylvania Commission on the Future of the Courts, Co-chair, Criminal Justice Subcommittee (1996-2000)

(c) Harris v. City of Philadelphia, Co-chair, Prison Population Management Board (1995-2000)

(d) City of Philadelphia, Alternatives to Incarceration Task Force, Chair (1992-1995).

I have chaired or participated in the following judicial committees:

(a) Co-chair, Criminal Justice Center Implementation Committee, 1993-1995.

(1) Chairperson, Security Subcommittee

(2) Chairperson, Automated Revenue Collection Sub-Committee

(b) Chairperson, Post-Adjudication Committee, 1993-2000.

(c) Chairperson, Pretrial Release Guidelines Committee, 1992-2000.

(d) Chairperson, Case Flow Management Committee, 1991-2000.

(e) Member, Criminal Rules Committee, 1996-2000.

(f) Member, Counsel Fees Committee, 1992-1996.

(g) Member, Board of Judges Criminal Justice Committee, 1989-1995.

(h) Member, Mental-Health Assessments: Oversight Committee, 1991-2000.

(i) Member, Pretrial Services Advisory Committee, 1991-1993.

(j) Member, Criminal Justice Center Judicial Advisory Committee on Design, 1991-1993.

(k) Member, Planning Committee, 1991-1992.

(l) Member, Judicial Accountability Committee, 1990-2000.

(m) Member, Judicial Study Committee, 1988-1996.

**Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I was admitted to practice before the Supreme Court of Pennsylvania in May 1977 and the United States District Court--Eastern District of Pennsylvania in January 1981. My admission to the bar never lapsed when I was a practicing attorney. Those memberships

lapsed when I became a judge.

**Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am a member of the Board of Directors of the Giving of Self Partnership, a coalition of African-American ministers and other religious community members engaged in the construction and operation of a community center.

I do not belong to, nor have I ever been a member of any organizations which currently or formerly discriminates on the basis of race, sex or religion.

**Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

As one of seven judges nationwide who pioneered the field of differentiated case management (DCM) in the late 1980s and early 1990s, my brief article describing and analyzing the Philadelphia court system's experiences with DCM was published in the Fall 1993 volume of *The Judge's Journal*. Differentiated case management is currently a widely accepted case processing technique across the country and in Philadelphia.

**Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before a committee or a subcommittee of Congress.

**Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent. My last physical exam was on October 24, 2001.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;

(1) Commonwealth v. Martorano and Daidone: 684 A. 2d 179 (Pa Super 1996). This case was disposed before another judge; I received the matter after its reversal on direct appeal. In this case, the defense argued that the application of the Jay Smith double jeopardy doctrine precluded retrial because of the willful misconduct of the trial prosecutor in 1984. The narrow issue faced was whether the Jay Smith holding applied to circumstances beyond the intentional concealment of physical evidence. The factual circumstances giving rise to this prosecution was the homicide of a union organizer by these defendants purportedly involved with organized crime. In this case, I was squarely confronted with the legal effect of the patent misconduct of the trial prosecutor. As a result of a careful examination of the minimal precedent in this area, it was determined that retrial was not precluded by either the federal or state constitutions. The Superior Court fashioned new law and reversed my decision. While I was troubled by the prosecutor's behavior, I did not think it the place of the trial court to create new law and fashion a remedy not previously endorsed by the appellate courts. This function is principally reserved for the appellate courts. The Supreme Court affirmed the Superior Court's decision.

The Assistant District Attorney in this matter was Marilyn Murray (1421 Arch Street; Philadelphia, PA; 215-686-5704). The defendants were represented by F. Emmett Fitzpatrick (926 Public Ledger Building; 610 Chestnut Street; Philadelphia, PA; 215-925-5200) and Thomas Colas Carroll (The Curtis Center; Suite 750; Philadelphia, PA; 215-925-2500).

(2) Commonwealth v. Scarfo, et. al.: 543 Pa. 727 (1996) Petition for Allowance of Appeal Denied. This opinion also pertains to a notorious Philadelphia case and, once again, directly addressed the application of the Jay Smith doctrine to the misconduct of the local prosecutor. In this case, the local head of the Mafia and numerous associates were convicted of homicide in a 1987 state court trial. The case was reversed on direct appeal, and my involvement in the matter commenced. Following extensive evidentiary hearings, my duty was to resolve double jeopardy claims and determine the applicability of Com. v. Jay Smith to the closing arguments of the prosecution. After examination of the precedent, retrial was permitted. The Superior Court affirmed my determinations; the Supreme Court denied allocatur.

The Commonwealth was represented by Assistant District Attorney Charles Joseph Grant (1401 Walnut Street; Philadelphia, PA; 215-496-3100). The defendants were represented by Norris Gellman (625 Walnut Street; Suite 750; Philadelphia, PA; 215-5704), M. W. Pinsky (No listing available in the Philadelphia Legal Directory); Ramy Djerassi (1600 Market Street; Philadelphia, PA; 215-751-0955); Joseph Santaguida (121 South Broad Street; second floor; Philadelphia, PA; 215-893-0900); Nino Tinari

(1500 Market Street; Philadelphia, PA; 215-790-4010); David McLaughlin (The Ben Franklin; Philadelphia, PA; 215-592-9400); Donald Manno (2500 McClellan Avenue, Pennsauken, NJ; 609-665-6464); Jeffrey Minehart (1923 Welsh Road; Philadelphia, PA; 215-671-1923).

(3) Commonwealth v. Calvin Johnson: The Superior Court opinion is reported at 663 A2d. 720 (Pa. Super, 1995). Recently, the Supreme Court affirmed the Superior Court's result, holding that orders disqualifying counsel are not immediately appealable. (No. 23, Appeal Docket, E.D. Pa., 1996). In this case, the trial court was confronted with the issue of the relative strength of the right to counsel of choice as measured against the statutorily enacted privilege for psychotherapeutic records. Defense counsel in this matter, despite clear instructions from the court, issued a subpoena duces tecum for the treatment records of the eyewitness to a crime **and** privately reviewed those extensive records despite my order that the court would review the records in camera. When the nature and extent of the violation were brought to my attention, in a question of first impression these equally clear and strong rights were balanced. Trial counsel was removed. The defendant, who was represented by court-appointed counsel of his choice, appealed. The Superior Court affirmed my decision. This case is reported at 663 A2d. 720 (Pa. Super, 1995). In 1996, the Supreme Court affirmed the Superior Court's result, holding that orders disqualifying counsel are not immediately appealable. (No. 23, Appeal Docket, E.D. Pa., 1996) The trial court, Superior Court and Supreme Court opinions are attached.

The Commonwealth was represented by Assistant District Attorney Hugh Colihan (1421 Arch Street; Philadelphia, PA; 215-686-8046). The defendant was represented by Assistant Public Defender William Bachman ( 70 N. 17th Street; Philadelphia, PA; 214-568-3190).

(4) Commonwealth v. Robert Edwards and Robin Pickron: The Supreme Court opinion is reported at 664 A2d. 1093 (Pa., 1993). The defendants' home was searched by state parole officers acting without a warrant. While a parole agent who is acting as an administrator of the parole system is not required to obtain a warrant to search a parolee's home, when the nature of the function performed by the agent changes and he begins to act as a police officer gathering evidence to support new criminal charges, a warrant is required. Based upon my analysis of the purpose of the agents' search, the evidence was suppressed. The Commonwealth appealed this order. The Superior Court reversed. The Supreme Court of Pennsylvania granted allocatur and reinstated my initial determinations. The Supreme Court opinion is reported at 664 A2d. 1093 (Pa.1993).

In reality, the governing standards in this area were not clearly delineated and legislation was required in order to address a gap in the law. During the 1995 Special Legislative Session on Crime, statutory authority was enacted appropriately resolving the issues raised in this appeal. Parole Officers now have a statutorily-based right to search a parolee's residence as a consequence of their responsibility to supervise

defendants in the community.

The Commonwealth was represented by Assistant District Attorney John Minges (1421 Arch Street; Philadelphia, PA; 215-686-5850). The defendants were represented by First Deputy Defender Dennis Kelly (70 N. 17th Street; Philadelphia, PA; 215-568-3190) and Daniel Preminger 1050 Robinson Building; (42 S. 15th St; Philadelphia, PA; 215-564-1227)

(5) Commonwealth v. Christopher Maiden; 599 A.2d 702 (Pa. Superior 1991).

This defendant, who had no prior criminal record, in a period of slightly more than one month sought out six young women who were generally alone and in isolated areas. Two of the women were kidnaped and raped, and others managed to escape his threatening advances through flight.

This defendant was sentenced to a total period of confinement of thirty to sixty years, and appealed the judgment of sentence as violative of the Pennsylvania Sentencing Commission's guidelines framework. The total period of incarceration was reached through the imposition of three lengthy consecutive sentences, each of which individually exceeded the aggravated sentencing guideline range. Six shorter consecutive sentences could have been imposed in accordance with the dictates of the Sentencing Guidelines. This sentencing framework was selected because of the dual concerns of the defendant's present inability to control his impulses, and my uncertainty as to his prognosis for future change. Rather than imposing a multitude of shorter consecutive sentences which effectively eliminate the possibility of parole, a lesser number of lengthy consecutive sentences were imposed. In Pennsylvania, parole does not automatically occur at the expiration of a minimum sentence. Moreover, as a defendant cannot begin to serve a consecutive sentence until parole is granted on a previous one, the imposition of a large number of consecutive sentences invariably lengthens the actual period of incarceration dramatically. Prison officials advise me that sentences which preclude the possibility of eventual release often create disciplinary problems within the prison.

Given the facts of these cases and the pathological nature of the acts, it was my intention to remove the defendant from society for as least thirty years, and perhaps for the remainder of his life. Under the sentencing framework chosen, if his behavior in prison is appropriate, he will eventually be released from custody. If his progress does not merit parole, the State Parole Board will adequately protect society through the denial of his parole petitions. The Superior Court affirmed this sentencing structure in a memorandum opinion. The trial court and Superior Court opinions are attached.

The Commonwealth was represented by Assistant District Attorney William Fisher (1421 Arch Street; Philadelphia, PA; 215-686-8045). The defendant was represented by Assistant Defender Paul Conway (70 N. 17th Street; Philadelphia, PA; 215-568-3190).



(6) Commonwealth v. Frank Schmidt, Superior Court, No. 1322 Philadelphia, 1988. A copy of the Superior Court opinion is attached. Superior Court, No. 1322 Philadelphia, 1988. This defendant was convicted of criminal trespass following his entry into the residence of his common-law wife, Margaret Schmidt. Ms. Schmidt fled the residence when the defendant began to break down the back door. The defendant claimed Ms. Schmidt should not have been permitted to testify against him since she was his spouse and such testimony is forbidden by statute. 42 Pa.C.S.5913 generally prohibits interspousal testimony, except in criminal proceedings against either party for violence or bodily injury attempted, threatened or completed. The defendant contended his forcible entry through the door of the premises was not an act of actual, or threatened, violence. The Superior Court, in one of the few appellate opinions on this issue, concluded burglary constitutes a crime of potential violence within the meaning of this statute, and the wife's testimony was appropriate. Copies of the relevant opinions are attached.

The Commonwealth was represented by Assistant District Attorney Louis Nicholson (1822 Spring Garden Street; Philadelphia, PA; 215-564-5657) and the defense was represented by Lenora Clayton (70 N. 17th Street; Philadelphia, PA; 215-568-3190).

(7) Commonwealth v. Carlton Ewell, Superior Court, No. 2569, Philadelphia, 1992. The Superior Court opinion is attached. Superior Court, No. 2569, Philadelphia, 1992. Following a jury trial, this defendant was convicted of possessing approximately sixty-five grams of cocaine and a loaded firearm in a vehicle occupied by one other person. The defendant appealed on several grounds, the most interesting of which was whether trial counsel was ineffective for electing not to request a jury instruction on exclusive access to the contraband. There was very little law in this area and ultimately the Superior Court affirmed the conviction and adopted my opinion. Both opinions are attached for your consideration.

Daniel Preminger (1050 Robinson Building; 452 S. 15th Street; 215-564-1227) was counsel for the defendant. The Commonwealth was represented by Assistant District Attorney Rudy DeGeorge (no listing available).

(8) Commonwealth v. James Mosely, October Term, 1991, No. 4695. A copy of the Superior Court opinion is attached. Following a jury trial, this defendant was convicted of possession with intent to deliver a controlled substance. Mr. Mosely appealed on a series of issues primarily arising from the denial of pre-trial motions. This case is submitted for your consideration because it is representative of the type of constitutional claims raised in state court. The trial court and Superior Court opinions are attached.

The Commonwealth's attorney was Geoffrey Seay (123 S. Broad St; Philadelphia, PA; 215-735-5300) Byron Houston (70 N. 17th Street; Philadelphia, PA; 215-568-3190) was counsel for the defendant.

(9) Commonwealth v. Michael Cunningham, July Term, 1988, Nos 425-427 (941 Phil. 1993, No. 0500, E.D. Allocatur Docket 1995). This case contains discussion of one of the few constitutional claims raised in my court. The trial court opinion, and appellate court orders are attached.

J. Michael Farrell, Esquire, was counsel for the defendant (718 Arch Street; Suite 400N; Philadelphia, PA; 215-925-1105). The Commonwealth was represented by Assistant District Attorney Linda Perkins (1421 Arch Street; Philadelphia, PA; 215-686-8723).

(10) Commonwealth v. Shuaib Ali, September Term, 1996 No. 552. This juvenile defendant came before me on a petition for decertification of his aggravated assault charges, which the Commonwealth had filed directly in adult court. For approximately five years, I presided over pretrial hearings in all matters filed in Philadelphia of this nature. This case is submitted because it is typical of the direct file decertification cases presented. The trial court opinion is attached.

The Commonwealth was represented by Assistant District Attorney Kishan Nair (1800 Vine Street; Philadelphia, PA; 215-498-7082). The defendant was represented by Assistant Defender David Powell; (70 N. 17th Street; Philadelphia, PA; 215-568-3190).

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

In the approximately one hundred fifty opinions I have filed while a member of this court, I was reversed only three times. In one instance (Com. v. Pickron and Edwards, 664 A.2d 1093 (Pa. 1993)), the Supreme Court reversed the Superior Court and reinstated my original judgments.

Com. v. Martorano, et. al., 684 A.2d 179 (Pa. Super 1996), a second reversal, also presented novel questions of law. This case involved the question of whether the Jay Smith double jeopardy doctrine precludes retrial because of the wilful, *in-court*, misconduct of the prosecutor. Ultimately, the Pennsylvania Supreme Court affirmed the Pennsylvania Superior Court's reversal of my decision to permit retrial.

I was reversed in the late 1980s in Commonwealth v. Mark Read, CP 87 08 0965, on the issue of whether the Clerk of Quarter Sessions or the District Attorney is responsible for preparing paperwork to transport the defendant from a state correctional institution. Since this decision was not reported, copies of the relevant opinions are attached.

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such

opinions.

If any of the opinions listed were not officially reported, please provide copies of the opinions.

Commonwealth v. Martorano and Diadone, 684 A. 2d 179 (Pa. Super 1996), Commonwealth v. Scarfo, 543 Pa. 727 (1996) raise significant double jeopardy issues. Commonwealth v. Calvin Johnson, 663 A2d. 720 (Pa. Super, 1995), discusses the limitations to the defendant's right to counsel of his choice. Ultimately, the Supreme Court affirmed the Superior Court's result, holding that orders disqualifying counsel are not immediately appealable. (No. 23, Appeal Docket, E.D. Pa., 1996).

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

1977-1980: Assistant District Attorney, City of Philadelphia; appointed position; appointed by District Attorney Emmitt Fitzpatrick (1977) and District Attorney Edward G. Rendell (1998).

1980-1981: Counsel, Pennsylvania Crime Commission; appointed by Crime Commission Executive Director William Anderson.

1981-1987: Assistant District Attorney, City of Philadelphia; appointed position; appointed by District Attorney Edward G. Rendell.

In July 1998 and January 1999, I was nominated for service on the United States District Court for the Eastern District of Pennsylvania. Hearings were not held on either of these nominations.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1987, I was a candidate in public elections for the position of Judge for the Court of Common Pleas in Philadelphia. In 1997, I was a retention candidate for the same position. I was successful on both occasions.

18. **Legal Career:** Please answer each part separately.

(a) Describe chronologically your law practice and legal experience after graduation from law school including:

(1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I have never served as a law clerk to a judge.

(2) whether you practiced alone, and if so, the addresses and dates;

I have never been a sole practitioner.

(3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

May 1977-September 1980: Assistant District Attorney; Office of the District Attorney; 2300 Centre Square West; Philadelphia, PA. I served in the Law and Trial Divisions.

September 1980-October 1981: Attorney; Pennsylvania Crime Commission; 527 E. Lancaster Avenue, St. Davids, PA. I was the attorney assigned to supervise an investigation into fraudulent coal tax shelters.

October 1981-March 1987: Assistant District Attorney; 1421 Arch Street; Philadelphia, PA; I served in the Trial Division.

June 1987: Attorney; Office of the General Counsel for the University of Pennsylvania; 34th and Walnut Streets; Philadelphia, PA; my responsibilities were exclusively in the area of potential employment discrimination matters.

July 1987-November 1987: Attorney; Ballard, Spahr, Andrews & Ingersoll; 1735 Market Street; 51st floor; Philadelphia, PA; I was an associate in the asbestos litigation division.

(b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

May 1977-September 1980: prosecutor. I was assigned to the Law Division for one year and prepared briefs filed in the Superior and Supreme Courts of Pennsylvania. I presented oral argument in both courts. During my tenure in the Trial Division, I was assigned to the following units: Municipal Court,

Felony-Waiver Program; Juvenile Court and the Felony-Jury Unit.

September 1980-October 1981: counsel to an investigative effort.

October 1981-March 1987: prosecutor. As a litigator, I served in the following units: Career Criminal, Narcotics (Assistant Chief), Felony-Jury, Homicide and Rape Prosecution (Chief).

June 1987: attorney, Office of the General Counsel for the University of Pennsylvania. During this period, I investigated potential federal employment discrimination claims.

July 1987-November 1987: attorney, Ballard, Spahr, Andrews and Ingersoll. During this period, I represented the interests of Raymark Corporation, a manufacturer of asbestos cloth, in depositions and trials in state and federal court.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my tenure as an Assistant District Attorney, my clients were the citizens of Philadelphia. I acted on behalf of the citizens of the Commonwealth while employed by the Crime Commission. Raymark Corporation, a manufacturer of asbestos blankets, was my sole client during my tenure at Ballard, Spahr, Andrews and Ingersoll.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court almost daily during my tenure as an Assistant District Attorney. I occasionally appeared in court while employed at Ballard, Spahr, Andrews and Ingersoll.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;

Less than one percent.

- (B) state courts of record;

In excess of ninety-nine percent.

- (C) other courts.

Not applicable.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;

Approximately one percent.

- (B) criminal proceedings.

Approximately ninety-nine percent.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

I served as lead counsel in all matters in which I appeared in court. I was counsel of record in several thousand bench trials and approximately seventy jury trials.

- (5) Indicate the percentage of these trials that were decided by a jury.

Approximately two to three percent.

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court nor have I submitted any briefs to the Supreme Court.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have devoted a significant portion of my energy to the process of creating a rational system of community sanctions, one which appropriately punishes offenders but which also provides the opportunity for motivated individuals to address their shortcomings and to develop into law-abiding citizens. For example, I was one of the initial proponents of a drug-treatment court in Philadelphia, and played a significant role in the early stages of that initiative. I was also the Project Coordinator for a special initiative intended to assist substance abusing females in addressing their drug

use, housing, educational, health and employment issues. I chaired the committee which totally restructured the pretrial release procedure in Philadelphia, basing release upon the likelihood that the defendant can be safely maintained in the community. Together, with a Deputy Court Administrator and personnel employed by the Pretrial Services Division, the nature of pretrial supervision in Philadelphia was restructured such that releasees were assisted and encouraged to obtain the supportive services necessary to refrain from criminal behavior. These ongoing projects, all of which will assist the disadvantaged in helping themselves, have occupied hundreds of hours of my time.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
  - (a) the citations, if the cases were reported, and the docket number and date if unreported;
  - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
  - (c) the party or parties whom you represented; and
  - (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. Commonwealth v. James Goodson, Common Pleas Docket Numbers 85-03-1346, 1348 and 1349. Prior to my involvement with this case, the defendant was convicted of sexual assault by a jury and sentenced to a lengthy term of imprisonment. Following this conviction, a series of phone calls was made threatening to kill a Common Pleas Court judge and the complainant in the criminal prosecution. The Police Department was unsuccessful in its efforts to identify the responsible party. I inherited responsibility for this matter when I became Chief of the Rape Unit. Ultimately, through the use of voice prints and an examination of the circumstances of the case, I determined that the complainant was a paranoid schizophrenic suffering from active hallucinations who had fabricated the entire criminal episode. The Commonwealth withdrew the case against the defendant and agreed to his release from prison. This investigation, which was my exclusive work product, was conducted unbeknownst to the defendant and his attorneys.

As described in the Philadelphia Inquirer at the investigation's conclusion in 1986, this was the first instance in recent memory where a member of the District Attorney's staff sua sponte investigated facts and circumstances underlying a criminal conviction, and petitioned the court to overturn, in the interests of justice, an apparently valid criminal conviction. In the words of Ace Moore, a Philadelphia Inquirer columnist, "... Davis has, in some ways,

restored some of the faith that I have lost in our justice system."

This investigation was conducted from January 1986 until July 1986. Elliot Moskowitz (215-985-1995) was trial counsel for the defendant. The Honorable William Manfredi (215-686-4216) of the Court of Common Pleas in Philadelphia was the trial judge. Norman Jenkins, the judge who was threatened, is now deceased. I had no co-counsel in this matter.

2. Commonwealth v. Geary Turner, Common Pleas Docket Number 82-03-3194; 528 A.2d 260 (Pa. Super, 1987). In three separate episodes, Mr. Turner robbed the victim, shot repeatedly at the same victim, and then threatened to kill the victim and his mother. Mr. Turner had previously been convicted of approximately ten felonies, including murder. Following a jury trial in 1983, this defendant was convicted of robbery, conspiracy, aggravated assault, weapons' offenses and intimidating a witness and was sentenced to a lengthy term of imprisonment.

I was sole counsel for the Commonwealth in a jury trial. The Honorable Marvin Halbert presided over this case. Judge Halbert is no longer an active member of the judiciary. Stuart Glovin, Esquire, who presently practices law in California, was counsel for the defendant. This case was significant because it involved complex factual issues and because, given the seriousness of the defendant's threats and the likelihood that he would have acted upon them, a not guilty verdict would have resulted in the complainant's death.

3. Commonwealth v. Darryl Moore, Common Pleas Docket Number 83-04-279-2084; 503 A.2d 50 (1985). In this trial by jury, I was sole counsel for the Commonwealth. Neil Carver (215-563-6235) was counsel for the defendant. The matter was tried before the Honorable Angelo A. Guarino (who is deceased) in November 1983. The defendant was convicted of aggravated assault for a criminal episode resulting in the paralysis of the complainant.

Sylvester Smith, the victim in this matter, was an armed forces serviceman who was shot from the rear because of his affection for the defendant's former girlfriend. With this criminal episode, Mr. Smith's life was permanently altered and his dreams became unattainable. Principles of fairness required a conviction in this matter.

4. Commonwealth v. Mark Davis, March Term 1984, Nos 1037; Commonwealth v. Jerome Boyd, C.P. 84-03-1037; Commonwealth v. Tyrone Lyles, C. P. 84-10-3300. These defendants were represented by Peter Levin, Esquire, (215-563-3454), Joel Moldofsky (215-575-0400) and Richard Johnson (215-563-1218). The Honorable Robert A. Latrone of the Court of Common Pleas (who is deceased) was the trial judge in these matters which were resolved in two separate jury trials. I was sole counsel for the Commonwealth.

As a result of a festering neighborhood dispute, these three defendants firebombed a motorcycle club, killing a forty-year-old woman with nine children who had nothing to do with this dispute. These defendants were tried in two separate jury trials and, after six months of total trial time, all were convicted of first degree murder. All are presently serving life sentences.



The cases were particularly challenging because the evidence was totally circumstantial.

5. Commonwealth v. Daniel and Linda Martin, C.P. 85-04-3912. I was sole counsel for the Commonwealth in this matter which was tried before the Honorable Albert Sabo (retired from the bench; phone number unknown). Michael Medway, Esquire (215-569-3878) and Lawrence Watson, Esquire, (phone number unavailable; apparently not practicing law) represented the defendants. These defendants, who were husband and wife, came to believe that their two-year-old son was possessed by the devil and, during their exorcism ceremony, killed the youth. After a jury trial, both were convicted of homicide. I was sole counsel for the Commonwealth in this matter.

6. Commonwealth v. Keith Butts, October Term, 1983, Nos. 1422-1430; 515 A.2d 616 (Pa. Super, 1986). This matter was tried before the Honorable Angelo Guarino, sitting with a jury, in June 1984. Judge Guarino is deceased. Martin Bashoff (215-686-9530) was counsel for the defendant and I was sole counsel for the Commonwealth.

The defendant was convicted of robbing and beating an elderly victim, leaving him bound in his own home for forty-eight hours. The victim, who was partially senile, previously failed to identify the defendant and the case was prosecuted principally upon the strength of the testimony provided by the cooperating co-defendant.

7. Commonwealth v. Lynn Adam and Sylvester Ellis, C.P. 85-02-1518. This case was tried before the Honorable William Mazzola, sitting with a jury, in December 1986. Christine Adair (215-735-0564) and Mary Zell (215-561-2420) were defense counsel. I was sole counsel for the Commonwealth in this matter. Judge Mazzola's telephone number is: 215-683-7133.

These two defendants kidnaped and sexually assaulted a young Southwest Philadelphia woman who had gone to the cleaners to pick up a coat. They held her for approximately three hours, taunting her and threatening to kill her. Following a jury trial, both were convicted of all charges.

8. Commonwealth v. Henry Kellum, October Sessions, 1981 No. 988-1000; 489 A.2d 758 (Pa. Super, 1985). This case was disposed before the Honorable James McCrudden (who is deceased), sitting with a jury, in February 1981. I was sole counsel for the Commonwealth. Stuart Glovin, Esquire, was counsel for the defendant. To the best of my knowledge, Mr. Glovin is presently in California.

This career criminal was convicted of the robbery and beating of an eighty-year-old woman, Fannie Eisenberg. Ms. Eisenberg was so terrified by this incident that she refused to come to court and testify against her assailant. Despite her absence, the defendant was convicted of all charges.

I have not retained any records from my years in the prosecutor's office, nor can I recall

other noteworthy cases by name. The cases listed are a fair cross-section of the type of matters I handled while employed as an Assistant District Attorney. I prosecuted principally violent street crime.

The following members of the legal community have knowledge of my character and work:

Sarah V. Hart, Director; National Institute of Justice; 810 Seventh St., NW; Washington, DC 20531; 202-307-2942.

Eric Henson, Assistant United States Attorney; 615 Chestnut Street; Philadelphia, PA; 215- 451-5200.

Tom Perricone, Assistant United States Attorney, 615 Chestnut Street; Philadelphia, PA; 215-451-5200.

William Fedullo, Esquire, Suite 1C-41; 2401 Pennsylvania Avenue; Philadelphia, PA; 215-235-6500.

Senior Judge Alex BonavitaCola; 658 City Hall; Philadelphia, PA; 215-686-3770.

President Judge Louis Presenza 1303 Criminal Justice Center; Philadelphia, PA; 215-683-7200.

Professor Kay Harris; Chair, Department of Criminal Justice; Temple University; 215-627-3766; 215-204-5167.

Judge Renee Hughes; 1406 Criminal Justice Center; Philadelphia, PA 215-684-7115.

Judge Anne Lazarus; 306 City Hall; Philadelphia, PA; 215-686-7328.

Judge Amanda Cooperman; 1221 Criminal Justice Center; Philadelphia, PA; 215-7080.

Deputy Court Administrator Joseph A. Cairone, 203 Criminal Justice Center; Philadelphia, PA; 215-683-7500.

Michael Clarke, Esquire; Dupont Corporation; Wilmington, Delaware; 302-773-0117.

Barry Savitz; Deputy Health Commissioner; Philadelphia Department of Health; Suite 800; 1101 Market Street; Philadelphia, PA 19102; 215-685-5425.

Gary Tennis; Assistant District Attorney; 1421 Arch Street; Philadelphia, PA; 215-686-5873.

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and

disposition and describe the particulars of the offense.

I have not been arrested, charged with or convicted of a criminal offense.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I have been a party to the following litigation:

(a) On Columbus Day, 1991, I caught a career criminal burglarizing my neighbor's home. He served eight years in the state prison.

(b) In February 1992, I was approached by a defense attorney who advised me the bailiff working in my courtroom was soliciting money for the assignment of cases to my calendar. The court officer had not represented he could affect my judgment but, rather, as the fact-finding process in my courtroom was viewed by the parties as intellectually honest and reliable, the assignment of cases to my docket had a measurable fiscal value. A relevant editorial, describing me as "hard-working and ...[with] a reputation for being firm and fair" is attached for your review and consideration. The editorial concludes by stating "[i]t could be said it's a triumph when a corrupt court official allegedly tries to trade on a Philadelphia judge's reputation for honesty."

Despite the potential embarrassment to me and a court system only beginning to recover public confidence because of earlier scandals, a deputy court administrator (the only other person aware of the matter) and I directed the attorney to the District Attorney's Office and promptly notified our superiors. A brief, but intense, three day investigation followed and the court officer was arrested in my courtroom with marked money in his pocket. He eventually pled guilty and was sentenced to a term of imprisonment. This matter is: Commonwealth v. Harold Brewer, CP 92-05-2788.

(c) In my capacity as Supervising Judge of the Criminal Division, I have been a party of interest in two petitions for Writs of Prohibition and/or Mandamus filed in the Supreme Court of Pennsylvania. Both actions were filed by the Defender Association of Philadelphia. Although I was not a defendant in either matter, I was a party of interest since the scope of the litigation was the review of the procedures then-Administrative Judge Alex Bonavitaola and I implemented in an effort to alleviate jail overcrowding. Very briefly, for many years I labored to improve local practices and procedures with respect to the use of confinement.

The City Administration's present strategy, which resulted in the lifting of the federal jail population cap, in many ways is a direct consequence of views initially articulated to the City

by the judicial leadership. It is not an overstatement to say that many of the ongoing internal system reorganization and reconfiguration efforts which resulted in the lifting of the prison cap were generated from my office. Over time, the court has redefined its view of its responsibility for jail population management and its relationship to the executive branch in this discrete area. This evolution was necessary because of the negative consequences of the prison cap to the citizenry. In many ways, the federal prison cap prevented the local courts from satisfying their core mission of protecting the public and establishing public confidence in the integrity of the judicial processes. Today, the courts and the City administration jointly recognize the most effective strategy for addressing jail population cap issues is through the internal examination of institutional practices and procedures and the implementation of reforms where necessary. As part of this larger process, the population of the Philadelphia Prison System and the various categories of detentioners were examined. In order to maintain a constitutionally permissible confinement level, confinement resources must be devoted to these specific areas: pretrial population, direct sentencing population, resentencing (or violations of probation and parole), and inmates held for other jurisdictions. As this examination proceeded, it became clear that approximately one-tenth of local jail beds were devoted to inmates serving state sentences in county institutions. Moreover, as a consequence of imposing a sentence of this nature, release decisions could be made only by the State Department of Parole, an institution historically slow to act on release decisions. Thus, county institutions were overflowing, the population ceiling had largely negative consequences for our city and courts, and no relief was in sight.

Upon examination of the paucity of legal authority, it became clear that the place of confinement was not a term and condition of a sentence; instead, appellate courts treat a confinement locale as an administrative determination. In my view, although the case law discussed only the authority of prison administrators to effectuate transfers, the enunciated policies should permit the judicial transfer of most of these inmates, provided basic due process concerns were addressed. Following extensive hearings, I ordered the transfer of most of these inmates. The Defender Association filed suit. The Pennsylvania Supreme Court denied relief in a written order. Defender Association of Philadelphia v. Common Pleas Court of Philadelphia, 156 E.D. Misc. Docket 1993.

One year later, the Defender Association filed a second Mandamus/Prohibition action with respect to factual circumstances not addressed by the initial action. The Supreme Court denied relief in this matter as well. Lewis Williams v. Common Pleas Court of Philadelphia, 176 E.D. Misc. Docket 1994.

(d) Representatives of the Judicial Conduct Board interviewed me about the circumstances surrounding Judge Bernard Avellino's refusal to accept the program assignment made by Administrative Judge John Herron. Judge Avellino boycotted this assignment for one week and was suspended without pay by the Supreme Court for three months. In discussing this most peculiar incident in print on January 8, 1997, Philadelphia Inquirer columnist Steve Lopez described me as "...one of the people who have restored a sense of decorum to the local courts in recent years..." Upon Judge Avellino's early retirement from the bench, the disciplinary complaint was withdrawn.

(e) As the co-owner of a vehicle involved in a minor automobile accident while operated by my wife, I was a defendant in a recently terminated civil case. At the time of the accident, I was at work and not in the vehicle. I am not certain why I was a party to this lawsuit. Most importantly, I was recently dismissed from the action through the agreement of counsel and the action against my wife was settled prior to litigation. Palmer v. Davis, CP 00 09 3754.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I do not anticipate any actual or potential financial conflicts of interest. If a potential conflict develops, I will promptly seek the guidance of my judicial superiors and the Administrative Office of the Courts. I will also be guided by the dictates of the Code of Judicial Conduct.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans to pursue outside employment during my service with the court.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See Net Worth Statement.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (a) If so, did it recommend your nomination?

Yes.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

A Judicial Selection Commission is in operation in Pennsylvania. In early 2001, I submitted an application to the Commission, was interviewed and evaluated as "recommended."

I participated in selection processes before the Federal Judicial Nominating Commission of Pennsylvania in 1997, 1998, 1999, 2000 and 2001 and was deemed recommended on each occasion.

In June 2001, I was interviewed by the White House Counsel's Office. In late 2001, the Federal Bureau of Investigation conducted an investigation into my background. On January 23, 2002, the President placed my name in nomination for service on the United States District Court--Eastern District of Pennsylvania.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	7,500.	Notes payable to banks-secured	N/A
U.S. Government securities-add schedule	N/A	Notes payable to banks-unsecured	N/A
Listed securities-add schedule	N/A	Notes payable to relatives	N/A
Unlisted securities-add schedule	N/A	Notes payable to others	N/A
Accounts and notes receivable:	N/A	Accounts and bills due	N/A
Due from relatives and friends	75,000.	Unpaid income tax	N/A
Due from others	N/A	Other unpaid income and interest	N/A
Doubtful	N/A	Real estate mortgages payable-add schedule (PNC) Bank	188,000.
Real estate owned-add schedule	250,000.	Chattel mortgages and other liens payable	N/A
Real estate mortgages receivable	N/A	Other debts-itemize:	N/A
Autos and other personal property	150,000.	American Express	2,000.
Cash value-life insurance	102,000.	Capital One	12,000.
Other assets itemize:			
Cash value--vested pension	100,000.		
IRA	20,000.	Total liabilities	202,000
		Net Worth	502,500
Total Assets	704,500.	Total liabilities and net worth	704,500
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	N/A	Are any assets pledged? (Add schedule)	N/A
On leases or contracts	N/A	Are you defendant in any suits or legal actions?	No
Legal Claims	N/A	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	N/A		
Other special debt	N/A		

AO-10 (w)  
Rev. 1/2000FINANCIAL DISCLOSURE REPORT  
Nomination ReportGovernment Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Davis, Legrome D.	2. Court or Organization U. S. District - Eastern PA	3. Date of Report 01/28/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U. S. District Judge Nominee	5. Report Type (check type) <input checked="" type="checkbox"/> Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 01/01/2002
7. Chambers or Office Address 692 City Hall Philadelphia, Pennsylvania 19107	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

## I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)		
1	Director	Giving of Self Partnership; Philadelphia, Pennsylvania
2		
3		

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

	DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)		
1		
2		
3		

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)			
1	2001	Court of Common Pleas - Judicial Salary	116,000.
2	2001	Justice Management Institute - Compensation	1,200.
3	2001	American University - Compensation	2,400.
4	2001	Germantown YMCA - Spouse's Salary	



<b>FINANCIAL DISCLOSURE REPORT</b>	Davis, Legrome D.	01/28/2002
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**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependant children. See pp. 25-28 of Instructions.)*

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1		Capital One - Mastercard	J
2			
3			
4			
5			
6			

\* VAL. CODES: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Legcome D.		Date of Report 01/28/2002	
<b>VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)	B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period	
Place "00" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method (e.g., buy, sell, partial sale, merger, redemption) (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2)	(3)	(4)	(5)	
	Date:	Value	Gain	identity of	
	Month-	Code	Code	buyer/seller	
	Day	(I-P)	(A-H)	(if private transaction)	
NONE (No reportable income, assets, or transactions.)					
1 Equivest Mutual Fund (IRA)			K	T	exempt
2 Common Pleas Pension			M	T	exempt
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT	Davis, Legrome D.	01/28/2002
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Davis, Legrome D.	01/28/2002
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/28/02

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

Chairman LEAHY. Good to have you all here. I understand that to accommodate Senator Durbin, I would yield to him first.

Senator DURBIN. Thank you very much, Mr. Chairman. I appreciate that. I thank the panel for joining us, and I want to especially commend Senator Specter as well as Senator Santorum, because I know that Judge Davis' name was submitted by the previous administration and he was not given an opportunity for this process to complete itself. And I am glad you stuck with it. The message we tried to deliver last week in another matter related to an effort to try to find some common ground, and your willingness to submit Judge Davis' name again is, I think, clear evidence of your good faith in this effort. And, Judge Davis, thank you for your endurance, putting up with this committee and what it did to you for 2 or 3 years, and now giving you a chance. I am glad that you are here and with us today.

Judge Africk, thank you for joining us, too, and as I mentioned to you at the outside, I have met a number of your friends as I have traveled around, and you come with the highest recommendations. And I am glad you are with us.

Judge AFRICK. Thank you.

Senator DURBIN. Professor Cassell, you have come here before, I believe, and testified before this committee on a number of issues, and I would just like to explore two or three issues in the brief time that I am given here, if I might.

What is your position on racial profiling?

Mr. CASSELL. Senator, racial profiling means a number of things to a number of different people. I am certainly unalterably opposed to racial discrimination in the criminal justice system and to using race as some sort of a predictor of criminality, which is I think the way most people use that term.

Senator DURBIN. And so when we look at statistics which suggest that 12 percent of the American people are African American, 13 percent of drug users are African American, 35 percent of arrests are of African Americans for drug crimes, 50 percent of convictions and over 60 percent of incarcerations are of African Americans for drug crimes, what conclusions do you draw from that?

Mr. CASSELL. Well, Senator, obviously there are a number of different statistics that one can look at when one looks at the problem of race in the criminal justice system. Certainly one of the conclusions you can draw from those statistics is that we have a tragic overrepresentation of minorities in the certain categories that you were talking about there.

As to how we address the particular problem those statistics reflect, a number of people have offered a number of different suggestions, and that is certainly not an area that I have focused on. I certainly think it is an issue that Congress and others need to address and to take whatever steps are appropriate to produce statistics that are more in line with the national norm.

Senator DURBIN. In our State of Illinois, a conservative Republican Governor, when he found that more than a dozen of the inmates on death row prepared for execution in the State of Illinois were, in fact, innocent because of proof through DNA—and Senator Specter and I have legislation on this issue—and by lack of competent counsel, he came to the conclusion we should have a morato-

rium on the death penalty in our State. And I think statistics also demonstrate that minorities tend to be subject to capital punishment more often than those who are not.

What conclusion would you draw about the imposition of the death penalty in America based on the experience in Illinois and your personal observations?

Mr. CASSELL. Well, my experience with the death penalty is rather limited. Obviously, I am from the State of Utah and am most familiar with the imposition of capital punishment in that State. We have not had the problem that apparently has afflicted the capital punishment system in Illinois, and so I wouldn't presume to pronounce to the Governor of Illinois as to how we ought to be running his criminal justice system. And certainly he has identified a problem there, and I commend him for taking steps to solve the problem.

Senator DURBIN. Do you think it is a national problem?

Mr. CASSELL. It is a problem that we have not seen in Utah, which is, again, the area that I am most familiar with. I serve on the Rules of Criminal Procedure Committee in Utah where we have taken steps to address, I think, one of the problems that you mentioned—ineffective assistance of counsel in capital cases—and we have come up with some rules that I think have served us well in Utah.

For capital cases, we have provided two attorneys in every capital case, and we have provided minimum qualifications for both attorneys. But for the lead counsel, we have put together a particularly stringent set of requirements to make sure that they have had continuing legal education, prior capital punishment trials, and those kinds of things. And I think the experience that we have had in Utah might well be—might provide some lessons for other States.

Senator DURBIN. I think you are right. I think that is a sound approach, and I hope Illinois will turn to it. And it does raise a question, though, because what you have suggested is good policy and procedure in Utah when it comes to death penalties is actually an extra effort to make certain to protect the constitutional rights of criminal defendants when they are facing capital punishment and an effort to make certain they understand what their rights are under the law. And yet for over 10 years, you have led a crusade in this country against *Miranda* rights, which were designed for that same purpose, to make sure that individuals in the criminal justice system who may not be aware of the rights that they have and may be victimized as a result are given that extra *Miranda* warning.

Do you see an inconsistency in that position?

Mr. CASSELL. No, Senator, I don't. Maybe I should clarify. You talked about a crusade against *Miranda* rights. Maybe I should explain precisely what I thought that I was doing, and then we could discuss the implications from there.

I have been particularly concerned that an act of Congress was going unenforced. As the Senator is aware, this committee authored legislation that came out of committee, was approved by both Houses of Congress, signed by the President—

Senator DURBIN. It was truly this committee, but in what year?

Mr. CASSELL. It was in 1968, Senator.

Senator DURBIN. It was while I was still in law school, so I wasn't a member of the committee. But I accept it was an act of Congress.

Mr. CASSELL. I was about 9 years old at the time, I guess, and—which was of concern to me because I have been concerned that the courts have not been giving sufficient deference to acts of Congress, and, in particular, I have been concerned that the courts have not been giving deference to findings of fact of Congress.

When that law was passed in 1968, this committee made a number of findings about how the criminal justice system would operate, about how warnings could be effectively provided to suspects, and how the rights of crime victims could be factored into an approach for dealing with custodial interrogations. And this committee approved, Congress approved legislation that said so long as the confession is voluntary, it could be admitted into evidence.

Now, of course, the warnings would be an important part of that determination of voluntariness. But if there was some technical mistake in the way in which warnings were delivered, that shouldn't automatically lead to the suppression of evidence.

I thought that that approach that the committee made—articulated made some sense. It wasn't my preferred approach to these issues. I prefer videotaping of police interrogation. That is the approach I have argued for in my Law Review article. But I certainly thought the congressional approach was a reasonable one. I defended that view. The Fourth Circuit agreed with me. The Tenth Circuit agreed with me. But the U.S. Supreme Court, at least seven of the Justices disagreed with me.

Senator DURBIN. I won't take any longer, and I thank the committee for its indulgence. The point I was trying to make was this: I thought that you identified a very important procedural safeguard that the State of Utah put in place when it came to the death penalty in terms of making certain that people had their constitutional rights protected, extra efforts by the government, in this case, the State of Utah. And I find your argument and logic when it comes to *Miranda* rights 180 degrees removed from that, and the suggestion that we would take away this basic protection of a criminal defendant's rights, the advice of the *Miranda* warning, and that somehow or another we should follow a statute that was passed some 34 years ago that had clearly been, if not overruled, at least seen differently by the Supreme Court.

So I am struggling with those two concepts, and I thank the committee for its indulgence in allowing me to ask first, and, Mr. Chairman, thank you, too. Thank you for being with us.

Chairman LEAHY. You are welcome. I appreciate you doing that. Senator Hatch.

Senator HATCH. Well, I am proud to have all three of you here. Mr. Davis, I had hoped that I could get you through our committee, but because of a lot of problems, we were unable to. But I have always been for you. And also, holding a Pennsylvania bar license, I have appreciated the service that you have given.

Mr. Africk, I know you well. You are an excellent lawyer. There is every reason why you can serve with great distinction.

I know Paul Cassell better than anybody here, and I can tell you not only is he a great law professor, but he is a great human being and will be a wonderful Federal district court judge.

And I hope in the practice of law we can sometimes have our differences, even though those differences sometimes are heartfelt. But in each case, I think Professor Cassell can explain not only the sincere but also the intellectually good approach that he has taken, especially with regard to *Miranda* rights. And I think if you look at what he has really stood for, it is a tougher approach towards making sure that the law enforcement people live up to the rules and *Miranda* itself, which is easily parroted any time there is a pick-up of a criminal, or an alleged criminal. If Professor Cassell's approach was taken, we would have very few arguments, it seems to me, about the fairness of the law enforcement people.

But I am very proud of you, Paul, and your wife, who is an attorney as well, and your family, and we look forward to having you approved by the committee.

Chairman LEAHY. Mr. Cassell, I found it interesting you mentioned the Supreme Court case when you were answering Senator Durbin's question. It was *Dickerson v. United States*. Is that correct?

Mr. CASSELL. Yes.

Chairman LEAHY. In a fairly conservative Court, you lost 7-2. Chief Justice Rehnquist wrote the majority opinion. You referred to that opinion of Chief Justice Rehnquist as a remarkable example of the imperial judiciary. When Justice Scalia said that he would disregard the majority's precedent, you said that was a silver lining in the dark cloud of the decision. Justice Stevens had asked you, is it your view that Section 3501 was intended to overrule *Miranda*, you said it was not intended to overrule *Miranda*. But you had written an article that says the purpose of Congress to overrule *Miranda* is a slap in the face of the statute.

I just found that interesting and thought I would add that to what Senator Durbin said. You have been here a number of times, I think about 16 times since 1988, before a congressional committee or subcommittee, three times on the subject of *Miranda*, five times on the death penalty, eight times on crime victims. Would it be fair to say that you feel the justice system has been too protective of the rights of criminal defendants?

Mr. CASSELL. Mr. Chairman, I don't think it would be fair to make that statement across the board. I think one needs to look at particular issues—

Chairman LEAHY. Do you feel there are areas where the justice system has been too protective of the rights of criminal defendants?

Mr. CASSELL. Yes, I do. Yes.

Chairman LEAHY. And those areas are?

Mr. CASSELL. One of the areas that I have talked about is *Miranda*, but even within that area, I have suggested that there are some areas where the courts have been too protective of criminal suspects and other areas where the court has been insufficiently protective of criminal suspects. The burden of my research has been to try to devise alternative approaches to the current rules which provide not only greater safety for crime victims and law-

abiding citizens, but also criminal defendants who are ensnared in the criminal justice system.

The proposal that I have advocated for dealing with custodial interrogations is videotaping of police officers. I believe, as Senator Hatch was suggesting a moment ago, in some ways that is a much more stringent requirement than reading words off of a card.

Chairman LEAHY. Of course, an impossible one in some circumstances. The beat cop who grabs somebody at the scene of a crime and starts asking questions doesn't have a videotape available.

Mr. CASSELL. For those circumstances, I think we could go with an audiotaping requirement. This is currently the law in Alaska and Wisconsin, two States that have implemented it. And it is, I think, certainly an experiment that we ought to think about in—

Chairman LEAHY. Well, let's go into this *Miranda*. You told Senator Durbin your concern was not with the *Miranda* decision by itself, but the fact that an act of Congress was being ignored. And yet the Reagan administration certainly didn't try to defend that act of Congress. I certainly wouldn't call them soft on crime even though crime went up throughout the Reagan administration. The Bush administration didn't call it—didn't seek to defend it, even though crime was going up during that time. Actually, the last administration, crime came down 8 years in a row, but they also took a similar position.

Do you have a problem with the *Miranda* warning? Do you think we should do away with the *Miranda* warning?

Mr. CASSELL. Senator Leahy, I would first like to comment on the factual question there, whether the previous administrations did support 3501. I think actually former Attorney General Edwin Meese and former Attorney General Bill Barr submitted either letters or testimony to this committee several years ago.

Chairman LEAHY. You are talking about before the courts.

Mr. CASSELL. Yes, that they had asserted 3501 before the courts. There was a case actually in 1988, if memory serves me correctly, where the Reagan administration argued that position. There was a case in the Bush administration as well. Perhaps I could refer the Senator—I don't recall all of the details or the case citations of those cases, but I have written a Law Review article on this subject that appeared in the Iowa Law Review where I—

Chairman LEAHY. I read it.

Mr. CASSELL [continuing]. Reflected all the relevant citations. So perhaps that could serve as—

Chairman LEAHY. I will read it again.

Mr. CASSELL [continuing]. My views on that point.

With respect to the question of whether I disagree with *Miranda* warnings, I have tried to be very clear in my Law Review articles. My concern is not with the warnings themselves. It is with the way in which the courts potentially exclude voluntary evidence when there is some technical question about the way in which warnings have been delivered or the timing at which they were given. This I think is a concern that this committee shared in 1968 when it passed a law—

Chairman LEAHY. Could I just double-check? Did you not say in one article that Attorneys General like John Mitchell and Ed



Meese knew about 3501 but no serious efforts were undertaken to reverse the Johnson administration policy or to secure any determination of the constitutionality of the law, and that an 1987 recommendation by DOJ's Office of Legal Policy that an aggressive effort made to test the law was never adopted?

Mr. CASSELL. I am not familiar with the specific quotation that you are drawing from. I have no reason to doubt that that is perhaps part of an article that I've written at some point.

Chairman LEAHY. *Miranda's Hidden Cost*, National Review, 12/25/95, page 30, written by and Stephen Markman.

Mr. CASSELL. That was an article written by Justice Markman—or currently Justice Markman on the Michigan Supreme Court and I. As you mentioned, it comes in a popular journal, the National Review. The more extended treatment of the issue is in my Law Review article in the Iowa Law Review where I covered all of the—

Chairman LEAHY. So if your Law Review article contradicts what is in National Review, we should rely on that Law Review article? Is that your position?

Mr. CASSELL. I don't think there's any contradiction, but certainly if there were to be some contradiction discerned, the Law Review article was—the basic problem—I don't know—

Chairman LEAHY. Fair enough. I just wanted to make sure which one to rely on.

Mr. CASSELL. The problem with those popular articles is that sometimes because of space limitations the editors compress a very complicated subject into a few words that doesn't capture—

Chairman LEAHY. Those pesky editors, who then put your name on the article.

Mr. CASSELL. I am sorry?

Chairman LEAHY. I said, those pesky editors, who then put your name on the article.

The concern has to be because a Federal judge, especially today, has a great deal of criminal jurisdiction. I have said, and I think I voted for 99 percent of President Reagan and President Bush's nominees, half of the current President Bush's nominees. But what I have said in voting for somebody to especially be a District Judge, a trial judge, I ask would I feel confident coming before this person, whether I was male or female, plaintiff or defendant, Government or defendant, irrespective of my age, my political affiliation, whatever my position, would I feel that I was being treated fairly?

Now, there is a concern by some that if you a criminal defendant you would not be able to look at a Judge Cassell and feel that way, that if you were the State or if you were the prosecutor, as both Senator Specter and I have been, then you might be in pretty good shape, but if you are the criminal defendant you would not.

So help me out here. If the criteria is—and I have heard many other senators in both parties of this committee say this is also their criteria, that they want a judge that no matter who you are, you are going to be treated fairly. How do we get around this question of whether you treat defendants fairly?

Mr. CASSELL. I think one way, Senator, would be ask the people that have seen me in action on a daily basis over the least 10 years. Those are me students in my classes. There is a student

evaluation form that they complete anonymously at the end of every term for the last, as I say, last 10 years, and I have always scored very, very highly on measures that would suggest that I am a fair person in class, that I look at both sides of the issue.

One of the things I am proudest about in my teaching career over the last 10 years is I have had a number of students come up to me and say, "Professor Cassell, we feel unable to express our views in other classes. We're shy or we're intimidated or we're afraid the professor is going to jump on us, but in your class, Professor Cassell," I've been told a number of times they feel that they're able to speak out.

The other thing that I'm very proud about is that my classes—I think the committee could certainly inquire of former students—I think have always been recognized—

Chairman LEAHY. We probably will, so go ahead.

Mr. CASSELL. Great. The former students I think would tell you that my classes have always been marked by an openness to the discussion that both sides of all issues are presented, and that I think, frankly, in some law school classes, hopefully not very many at our school, but at other schools, is sometimes not the way classes are conducted. And I think, again, if the committee were to talk to people who know me the best, have seen me in action in my primary job over the last 10 years, they could come away with some comfort about my ability to fairly consider both sides of all the issues.

Chairman LEAHY. Considering your very harsh criticism of Justice Rehnquist's decision in the *Dickerson* case, would you still feel bound by *Dickerson* as stare decisis?

Mr. CASSELL. Absolutely, Senator.

Chairman LEAHY. How difficult would it be to set aside your personal feelings and years of advocacy for a different result?

Mr. CASSELL. I understand quite clearly that there's a difference between being an advocate and being a judge. And as to how difficult it will be, I guess I am encouraged by the experience of several jurists that I admire greatly. Thurgood Marshall was, of course, an advocate for many years, both as a Solicitor General, during which coincidentally, he argued, I think basically the same position that I argued on *Miranda*, argued for the rights of African-Americans around the country. Ruth Bader Ginsburg argued for the equal rights for women. Both of them went on to be I think very fair-minded and open-minded jurists, and I'm hoping to follow in some modest way the example that they set, which was going from the role of an advocate to going to the role of a fair-minded and open-minded jurist.

Chairman LEAHY. Your scholarship in *Miranda*, and of course as a professor you can take any position you want, but there is strong substantial criticism for failing to acknowledge contrary legal authority in opposing viewpoints. George Thomas wrote in the *Legal Times* on August 12th, 1996, quote: "Scholars have a duty to describe all the evidence and to acknowledge contrary interpretations if they are widely held. Professor Cassell draws a one-sided picture of the evidence against *Miranda*." I quote that because, again, using this definition, am I going to be treated fairly, not in a law class of a Professor Cassell, but in the Federal District Court of the

Judge Cassell, do you feel that you can listen to both sides, and do you feel the criticism of your legal scholarship is justified?

Mr. CASSELL. Perhaps this would be an appropriate point in the record, Mr. Chairman, to put in a record which I—a letter which I understand Professor Thomas has sent to the committee. I haven't seen it, but I've been advised that he sent a letter to the committee supporting my nomination and saying while we've had our academic disagreements on *Miranda* and some other legal issues, he nonetheless thinks I could be fair minded. I don't want to put words in his mouth.

Chairman LEAHY. I am sure that we have such a letter. If Senator Hatch would want to put it in the record, of course, I would have no objection to that, but let us go back to my—

Senator HATCH. I have a bunch of—I will put a bunch of letters in.

Chairman LEAHY. Let us go back to my question though. Do you feel that notwithstanding the criticism in the past, that you can set aside such an advocacy position and listen to both sides?

Mr. CASSELL. Yes, I do, Senator. In fact, again, one of the things that I've done over the last 10 years in my law professor position has been to look at both sides of legal issues and to try to understand where both sides were coming from, and I understand that that's certainly an important attribute of a judge, if not the most important attribute.

Chairman LEAHY. Is this what you were doing then with *Miranda* when you first wrote that the purpose of Congress to overrule *Miranda*, as a slap in the face of the statute, was explicitly expressed by both supporters and opponents of the measure during Congress's consideration of it, but when Justice Stevens in *Dickerson* asked you directly, "Is it your view that 3501 was intended to overrule *Miranda*", you responded, "It was not intended to overrule *Miranda*."

Was there a change in your views or was there a change in whether you are a columnist or an advocate before a court, or is there some other reasons?

Mr. CASSELL. Yeah, I think there is some other reason, Senator. I think the best way to describe what Congress did in Section 3501 was to replace *Miranda*. I think colloquially, in a popular article, one could call that overruling *Miranda*. I think in a more precise legal dialogue, which is the kind of dialogue one has with a Supreme Court Justice, one needs to use more precision, and in that—again, I think rather than relying on just a brief shorthand comment, I filed a 50-page brief in that case which fully set forth my views. I know that Senator Hatch also—

Chairman LEAHY. Do you feel that your views in responding to Justice Stevens were different at all from your views that you had expressed in earlier writings?

Mr. CASSELL. No.

Chairman LEAHY. So they are perfectly consistent?

Mr. CASSELL. I believe that the terminology was different, giving the differing circumstances that surrounded each of those quotations.

Chairman LEAHY. In August 1997 you co-authored a "Wall Street Journal" article with Paul Kamenar, entitled "Another Law Janet

Reno Doesn't Like." It starts off by saying, quote, "Why does the Clinton Justice Department continue to team up with criminal defense lawyers to let armed felons and other criminals escape prosecution?" Close quote. I mentioned it because I thought it interesting, because this is—in the 27 years I have been here, this is the first time I have seen any administration, Republican or Democrat, where the crime rate went down every single year, and it did for 8 years. You went on to attack Attorney General Reno for failing to use 18 USC Section 3501, the *Miranda* statute, even though prior Republican and Democratic administrations had followed the Supreme Court by this statute. You also chided her for refusing to appoint Independent Counsel in a campaign finance investigation.

The concern I have in the article—it is always in the eye of the beholder—but that it was highly partisan and ideological. If you take the opposing view from you, contrary to the way you described how you would look for opposing views, that they are not just wrong, but they are dishonest, they are disreputable, they are unethical, or all three, is that an attitude you would carry forward into a courtroom?

Mr. CASSELL. Well, Senator, I don't think I used any of those terms that you have just used in that article. Another point I'd make is I see two of my former clients in one of the cases that I was writing about there—

Chairman LEAHY. Why do they team up with criminal defense lawyers, let armed felons and other criminals escape prosecution—I will put the whole statement in the record, but—

Mr. CASSELL. As I was saying, I see Senator Sessions and Senator Kyl here. I filed a brief on their behalf and on behalf of several other senators. What happened in that case, Senator, was in my view quite unusual, and if there is strong language in the article I think it's because of the unusual circumstances there. A career prosecutor had filed a brief in the Fourth Circuit invoking an act of Congress. Later, a defense attorney called political officials in the Justice Department and asked that those political officials withdraw the brief of the career prosecutor that was being used to try to convict a dangerous felon, and the political people at that point withdrew the brief from the Fourth Circuit.

Now, I have never seen a case like that that I can recall, and that's why I filed a brief, again, along with several other senators that were very concerned about those circumstances and made the point to the Fourth Circuit.

I should point out that I believe the Fourth Circuit shared our concern in that case and another case, the Leong case, and called for some additional briefing on the point, and ultimately agreed with the view that I was articulating, along with the view that Senator Sessions and Senator Kyl were articulating, that this act of Congress took precedence over the other *Miranda* rule, so I think our concerns were well founded there.

Chairman LEAHY. The Chief Justice felt otherwise, and seven Justices felt otherwise.

Mr. CASSELL. That's correct.

Chairman LEAHY. And notwithstanding the rather harsh words you had about their decision, you would follow their decision?

Mr. CASSELL. Well, I don't think I used harsh words. Again, I'd ask that the Law Review article, which goes on for, I think, 50 or 60 pages, speaks for itself on that point. I certainly exercise what I guess is the prerogative of anybody who loses a case, which is to write a Law Review article disagreeing with the result.

Chairman LEAHY. Obviously, we have differing views. Maybe we are a little bit easier going in a little State like Vermont, but when you call Justice Rehnquist's decision "a remarkable example of the imperial judiciary," I find that a tad harsh. It is your view that it is not. Well, and you have a right of course to take whatever view you want. I want to get on to questions for others here, but I just want you to know I consider that harsh. And I have certainly had decisions where I have disagreed with the Supreme Court, but the Supreme Court's decision, whether you agree or disagree with it, is the final word.

Mr. CASSELL. Yes, Senator.

Chairman LEAHY. I want to go to others and then I want to get back. I do not want Judge Africk or Davis to think that they are only spear carriers here. You are not. This is a very important thing.

But I do note that the National Association of Criminal Defense Lawyers, and its Utah affiliate, have opposed your nomination. They argue that your partisan fervor raises questions about your ability to provide a fair hearing and judge objectively in criminal cases.

Is there anything you want to say to that? And we will put their statement in the record too of course.

Mr. CASSELL. Yes, Senator, I think that they haven't looked at my entire record in reaching that conclusion. There are a number of articles that I've written that have argued positions that are favorable to criminal defendants. The very first article that I wrote when I arrived at the University of Utah advanced an argument that some of the Supreme Court's decision upholding a death penalty were actually too broad and should be reconsidered. So if you look—I've argued for videotaping of police interrogations. I've argued for DNA testing to potentially exonerate persons who have been convicted of capital crimes, and I've also represented a number of crime victims who—on a pro bono basis, who have had no other way to have their views presented to the criminal justice system, so I've certainly tried to be sensitive to those who are facing state power and don't have a voice in the legal system to speak for them, and I would hope that those kinds of things would be considered along with—I haven't had a chance to see the letter from the National Association of Criminal Defense Lawyers—

Chairman LEAHY. We will make sure you have a copy and you feel free to respond, because the record will be kept open. A number of other senators have questions for you, and obviously that or any other answer, if you want to expand on it, obviously, you will be given that opportunity.

Mr. CASSELL. Thank you, Mr. Chairman.

Senator HATCH. If I can make one comment. It is not unusual for law professors to criticize the court. In fact, it is not unusual for the Justices themselves to criticize each other, and sometimes the criticisms are considered quite harsh. That is how we handle the

law. That is how we refine the law. It is how we get so we understand the law. It is how we sometimes reach the conclusions in the law. So the only key here is, is will you apply the law?

Mr. CASSELL. And the answer to that is unequivocally, absolutely yes.

Senator HATCH. You know, I knew that was what your answer would be because I know you very well.

Chairman LEAHY. Senator Specter has been waiting patiently, and it is his turn.

Senator HATCH. Right. I did not take my turn.

Senator SPECTER. That is not true, Mr. Chairman. I have not been patient. [Laughter.]

I have stayed. Customarily, there are not too many senators who attend confirmation hearings. I have been staying to protect Judge Davis in the event there was any tough line of questioning. I think it is relatively safe for me to leave now.

Chairman LEAHY. He is doing okay.

Senator SPECTER. As long as there are no questions asked of you, you should be explicitly advised you have the right to remain silent. [Laughter.]

I would like to comment just a bit on the issues raised before Professor Cassell. If you said they are an imperial judiciary, I think the most serious charge that could be leveled against you would be plagiarism, not excessive rhetoric. One of the members of this committee had some tough things to say to the Courts last week I think in the presence of the Chairman and the Ranking Member. I have tried to get the Court on television so we could follow what they do. They have gone far and wide on the Commerce Clause and on States' Rights. I think to say that they are imperial is a vast understatement. There may be some institutional concern that I have on the separation of power, but on the *Miranda* issue you have said you are going to follow the law, and you really do not have a whole lot of choice on that as a District Correct Judge if confirmed, and I think you will be.

I appeared in this room in August of 1966 before the McClellan Committee, testifying about the impact of *Miranda* on criminal trials. I was DA of Philadelphia at the time, and I was very much concerned about the retroactive application of *Miranda* and tried to get it changed. I had a case where a cab driver was robbed and murdered, a case called *Commonwealth v. Hickey*. It occurred in May of 1966, and the defendant was arrested in May of 1966 and not surprising, the defendant did not get the *Miranda* warnings which were not articulated until June 13th, 1966, but that confession was thrown out of court on grounds of retroactivity.

I then brought a case and had cert. granted in a case called *Commonwealth of Pennsylvania v. Weir*, where a man was in an insane asylum in 1963 charged with five burglary murders. He had a habit of pushing old women down steps. And he came out in 1968, and we could not use his confessions. We obviously could not—the police could not give him the warnings until 1963 because they did not come down till 1966, and the Supreme Court granted cert. in that case. And then the Pennsylvania Supreme Court decided the case on State Court constitutional grounds to render the U.S. Supreme Court decision moot.

And this business about the Omnibus Crime Bill of 1968, I argued that case in a case called *Kupp v. Oregon*, representing the National DA's Association in 1969, and that was a case which arose in 1965 under *Escobito*. And I made the argument to the court that an act of Congress was presumptively constitutional, fairly well-accepted principle, and that the due process clause to the Fourteenth Amendment, which picked up the Fifth Amendment privilege against self incrimination and the Sixth Amendment right to counsel could be no more expansive than the Federal law. And the Chief Justice Warren looked down at me—and we were arguing *Escobito*. He said, "But if *Escobito* goes, so will *Miranda*." And I said, "Well, Mr. Chief Justice I can't control that." I won the case unanimously. Last time I was there I lost a case unanimously. But the Court did not refer to that.

But I think in an advocacy context, go to it, Professor, as long as a Judge you will follow the law, and I am sure you will. Now, I think *Miranda* overall has been a good decision. I think the police have accommodated to it, but where a prosecutor or a litigant wants to challenge retroactivity, it seems to me that is perfectly justifiable, and if you want to re-raise the issue in the Court, the Courts can take care of themselves, even with professors on the other side.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. I just wanted you to know, Judge Davis, we will be hitting with a very tough question. Is he willing to uphold the law and follow stare decisis, but if you are willing to take your chances on his answer to that, of course I know you have other hearings.

Senator SPECTER. Senator Leahy, Judge Davis did not need me here at all.

Chairman LEAHY. Well, Judge Davis would not be here without you so.

Senator SPECTER. That is true, that is true.

Chairman LEAHY. And he has spoken very—Senator Specter has spoken to me privately before, very strongly in your behalf.

Senator KYL.

Senator KYL. Thank you, Mr. Chairman. I wanted to be here for this hearing to especially support the nomination of Professor Paul Cassell. I do not know either of the other two candidates, but their records are outstanding, and I would hope that we could quickly approve all three members of this panel on to the full Senate for consideration.

Because of the questions that you have asked Professor Cassell, let me just make a couple of points. He has a reputation of fairness and reasonableness and objectivity that is as fine as any candidate that I think we have ever had come before us. Like a lot of other very smart active people, he has taken positions before. It will be in the record and he will be able to read it then I think.

He has taken positions, and I would hope that because someone has an active legal mind and is willing to propose solutions to problems that may not be strictly conforming to the norm of the time, that that will not disqualify a candidate from being considered, especially when that candidate has made it very clear that he will

abide by the precedence of the Supreme Court and there is nothing in his record to suggest anything but that.

There is one area in which a judge, however, has an ability to continue to pursue matters that interested them before they sent it to the bench, and in that sense to continue to be activist. And, Mr. Chairman, I have in mind supporting the rights of victims of crime, because we know that while some of those rights are embodied in legislation, and of course some of us would like to see them embodied in the Constitution as well, the primary method of supporting rights of victims of crime is for judges to be cognizant of what those rights are and to be very forward leaning in the protection of the victims of crime as they appear before them in court. If the prosecutors and the court personnel and the judges are on top of those things, and are willing to support the rights of victims of crime, then generally they can do all right in the courts. But if they are not, then we have found, unfortunately, according to the Justice Department that crime victims can be disadvantaged.

One of the reasons that Judge Cassell's nomination is so important I think here is that he has been a leader in victims' rights advocacy, and as a result enjoys widespread support among national victims' rights organizations. I think they would very much like to see a leader like Judge Cassell elevated to the bench because of his ability to continue——

Chairman LEAHY. He is still Professor Cassell.

Senator KYL. I am sorry. Did I misspeak?

Chairman LEAHY. No, that is all right, you can call him whatever you want, but I just thought being a professor is a hard enough job anyway. He ought to at least be able to enjoy the title.

Senator KYL. If I misspoke, I apologize. But groups like the National Organization for Victims Assistance, Parents of Murdered Children, The Stephanie Roper Foundation, National Crime Victims Amendment Network, and many others, including in specific States like California, and Arizona and others, are very strong supporters of Professor Cassell because they know of his advocacy for their cause, and this is a situation of which there is no difference of opinion with the Supreme Court and where he would have the ability to continue to try to protect their rights as a member of the bench.

So I would hope that all of these things would be weighed in the committee's determination as to whether or not to pass Professor Cassell's name on for consideration to the full Senate. And based upon his stellar background, his obvious intellectual ability, his law school, his law review, his teaching, his advocacy before the U.S. Supreme Court and other things, that we would agree that this is one of the most eminently qualified candidates for the Federal District Bench that we have had before us. And, frankly, I am proud of the fact that he has been willing to take even perhaps unpopular positions in matters and to advocate those positions to the extent that he believes that they would better round out the law. It has been made very clear that he would support the Court's ultimate decision in those kind of cases.

I was going to ask the same question that the Senator from Utah asked, and obviously, I do not need to do that anymore. So if any of the members of the panel would like to comment on what I have



said, they are certainly free to do so. And, Professor Cassell, you are as well.

Finally, Mr. Chairman, I would just say as a personal matter, I have known Professor Cassell now for several years, because as you know I have worked on these crime victims issues as well, and I just do not know a finer candidate for our consideration to the Federal District Bench than Professor Paul Cassell.

Chairman LEAHY. Senator Kennedy.

Senator KENNEDY. Thank you very much, Mr. Chairman. And I apologize that we were unable to get here earlier for the full discussions, but I will read the record over and look forward to it. And some of these matters might have been gone through, but I would like to see if we cannot have the response to the questions.

And this is for Professor Cassell. I know that you have been asked, as I understand from the staff, from the Chairman about your views on *Miranda*. And I was interested that after your loss in the *Dickerson* case, you stridently criticized the Supreme Court and called Chief Justice Rehnquist's ruling "a remarkable example of imperial judiciary." Most disturbing you found solace in the fact that Justice Scalia, in dissent, declared that he would ignore the majority's ruling and continue to apply the Section 3501 in all future cases, and you described his extraordinary show of disregard for the majority's ruling as a silver lining in the dark cloud of decision.

You made the statement less than two years ago. Do you stand by it today?

Mr. CASSELL. Yes, I do, Senator.

Senator KENNEDY. You stand by your statement that Judge Rehnquist's ruling is a remarkable example of imperial judiciary?

Mr. CASSELL. I do, Senator.

Senator KENNEDY. And you also stand by your statement that Justice Scalia said he would ignore the majority's ruling and continue to apply it. Do you support that position?

Mr. CASSELL. As an academic, I believe that Justice Scalia's decision was very well reasoned, and as I have suggested earlier, the article that I believe you are quoting from is what might be called a loser's prerogative. I certainly recognize that seven Justices rules against me. That's the law of the land and I will follow it, but it seems to me that the least a loser could do is write a Law Review article praising the dissenting opinion in a case.

Senator KENNEDY. My concern is if you are confirmed as a judge how we can be sure that you will follow the binding precedent that you strongly, strongly differ with.

Mr. CASSELL. Senator, I can assure you that no one is more well aware of what the majority said in the *Dickerson* decision than I am. I read that within minutes of it being released from the Supreme Court, and I am fully aware of the parameters of that decision. That is the law of the land. That will be the law that I will apply.

There is, of course, a difference between one's role as an advocate or an academic and the role that one undertakes when one becomes a United States District Court Judge. Those roles are completely different. The role of a District Court Judge is to follow the law of the land, and *Dickerson* is the law of the land.

Senator KENNEDY. Well, the reasons—I mean that is a standard boilerplate answer which we expect, but you seem to add a personal characterization about your own strong personal views on this, and that is why the question is particularly relevant, being able to separate your own view when you have been rather harsh in terms of the criticism of the holding. I mean I think that is where you expect people to be supporting the law of the land. We do not often have nominees for there that are as outspoken and as critical in personal terms really of the Chief Justice or the members of the Court as you have been, so that is why that is particularly kind of a question. You are separating yourself from your own personal views that were very direct and extremely critical of the Chief Justice Rehnquist and of the majority in that case.

Mr. CASSELL. Could I add one thing, Senator?

Senator KENNEDY. Sure.

Mr. CASSELL. I do not think I criticized the Chief Justice personally. I did criticize the opinion professionally.

Senator KENNEDY. Well, the ruling “a remarkable example of imperial judiciary.” I mean you can say that that is an academic, that is—we will leave it to others, that may draw their own conclusions on that.

On the issue in October 20th the panel of the Fifth Circuit Court of Appeals denied the habeas corpus relief to a Texas death row inmate, whose lawyers repeatedly slept through his trial for substantial periods of time. I know you are familiar with this case. You defended that decision on National Public Radio, stating that there was no real suggestion that the defendant was innocent. The en banc Fifth Circuit disagreed. It reversed the panel and granted the inmate relief. It held that when a court finds on the basis of credible evidence that the defense counsel repeatedly slept as evidence was being introduced against a defendant, that defendant has been denied counsel at a critical stage of the trial. Do you agree or disagree with the holding of the en banc Fifth Circuit?

Mr. CASSELL. I have not had an opportunity to study all of the ramifications of the en banc holding. The en banc holding, as I understand it, relies on two particular issues, first of all, an interpretation of the presumptive prejudice rule in *Strickland v. Washington*, and secondly a question of retroactivity under *Teague v. Lane*. As I recall, the decision is 9 one way, 5 the other. There is a concurring opinion as to the *Teague* issue. The *Strickland* issue I think was 7 or 8 judges. So it's a very complex decision, and—but there are, I believe, two dissenting opinions as well that dissent on varying points of those two particular doctrines. So it's not a decision that I've studied in great detail. As you suggested with your earlier questions, the focus of my academic research has been on *Miranda*, but I am generally aware of the Fifth Circuit's decision en banc.

Senator KENNEDY. Well, do you agree or differ, when a State court finds on the basis of credible evidence that defense counsel repeatedly slept as evidence was being introduced against a defendant, that defendant has been denied counsel at a critical stage. Would you agree with that statement?

Mr. CASSELL. That sounds about right to me, Senator, yes.

Senator KENNEDY. I am sorry, I did not hear.

Mr. CASSELL. When counsel repeatedly sleeps through critical stages of a trial, absolutely, that sounds to me like a denial of Sixth Amendment right to counsel.

Senator KENNEDY. Last year Justice O'Connor observed that more than 90 death row inmates nationwide have been exonerated since 1973. She said there were serious questions about whether the death penalty is fairly administered in the United States, and added, "The system may well be allowing some innocent defendants to be executed." You, on the other hand, have been described as the academic world's foremost defender of capital punishment. You have been described as an urban legend, possibility that an innocent person has been put to death. In response to a study showing a 68 percent error rate in capital cases by stating that this statistic might be viewed as a reassuring sign of the judiciary circumspection before imposing the ultimate sanction. And most incredibly, you have argued that the failure of the United States to execute more people has sent a deplorable message and has undoubtedly led to more deaths. Your views on the death penalty depart dramatically from Justice O'Connor, and others, who even if they support the capital punishment, are concerned about unfairness in its implementation and possibility of wrongful execution.

How can we be assured that you will put aside personal views if you are confirmed as a Federal Judge?

Mr. CASSELL. Well, first of all, with respect to the factual premises in that question, I am not certain that my views differ from those of Justice O'Connor. I share Justice O'Connor's concern that we have to be very, very careful about the prospect of executing an innocent person. Justice O'Connor has also expressed her concern that in some situations the appellate review process, habeas review process at multiple levels, extends cases unduly, and creates unnecessary anguish for family members who have lost a loved one in a homicide.

The question of course in these cases is to strike a reasonable balance between those competing concerns, and in my view, that balance is not one for a judge to strike, but for Congress to strike. Congress has drafted the laws dealing with habeas corpus, and those will be the laws, as a Federal District Court Judge that I will apply. And I give you my assurance, Senator, that when a capital case comes before me, no less than any other case, I will fairly apply the laws that govern that situation, and if a death row inmate is entitled to relief, he or she will get it, and if he is not entitled to relief, he or she will not get it.

Senator KENNEDY. Your comments in the congressional testimony and writings often accused the Clinton administration of misleading the courts with respect to *Miranda*. I believe your comments in the DOJ's defense, *Miranda* was driven by politics and not by legal analysis, argued that it has been a clear constitutional abdication on the part of the Executive Branch in the last several years during the tenure of the Clinton administration, in the American Criminal Law Review, "Will *Miranda* Survive?"

And you took specific aim at then Attorney General Janet Reno, accusing her of impeding the enforcement of a statute and teaming up with defense lawyers to let armed felons and other criminals escape prosecution.

Did you ever take note that the Reagan and Bush administration also declined to defend 3501?

Mr. CASSELL. No, Senator, I didn't. I did take note of the fact that both—the reasons I didn't was that Attorney General Meese, Attorney General Barr both, I believe, submitted statements to this committee indicating that they had actually taken affirmative action under that statute during their tenures, and it was their policy during their administrations that—they took the view that 3501 was constitutional. So that was the view that I took note of, as expressed by the former Attorneys General.

Senator KENNEDY. You are saying that they believe that it was constitutional?

Mr. CASSELL. That's what they said, yes, Senator.

Senator KENNEDY. But they did not—they viewed it was constitutional, but they did not take action under it?

Mr. CASSELL. They did, but in a limited number of cases, Senator.

Senator KENNEDY. I just did not see where they had.

Mr. CASSELL. There is a case in 1987, *United States v. Goudreau*, where Attorney General Meese authorized a 3501 brief. There was another brief, I believe it was *United States v. Cheely*, filed either during the waning days of the Bush administration or the early days of the Clinton administration.

Chairman LEAHY. If I can interject, they did not direct their law enforcement, FBI and whatnot, to take that position, did they?

Mr. CASSELL. They directed their prosecutors to take it. There was a 1969 Justice Department memorandum that was—

Chairman LEAHY. But not their law enforcement, the thousands of agents and others who were on the street, who would be the first person the prospective defendant might come in contact with?

Mr. CASSELL. They directed compliance with 3501 for law enforcement agencies. The 3501 still envisions law enforcement agencies giving warnings. What it doesn't envision is suppressing voluntary statements when there is a technical issue about how the warnings were delivered.

Senator KENNEDY. I do not know whether—we have all received these number of letters. I do not know if you are familiar with them, but I was rather surprised at the number from attorneys in Utah that have written to us. Ronald Yengich, who is an attorney in Salt Lake City; Clark Donaldson, again in Salt Lake City, in particular talking about your disturbing—"Cassell about his extremist views; he has shown a repeated tendency to eschew the truth when it did not suit his preconceived views of what the law—for example, his claim that the *Miranda* decision led to repeated clearance rates on serious crimes is unsupported." And then they list four or five lines of different citations on this. "Most disturbing of his behavior is a number of distorted factual representations." And Gilbert Athey, who is, I guess, the past president of the Utah Association of Defense Lawyers.

I do not know whether you have had a chance to see these and have any opportunity to react or respond to them. I think you ought to have a chance to do so.

Christine Rogers, who is from Salt Lake City, and Mr. Bugdon, Walter Bugdon, and others. I do not know whether you have had

a chance to see them, whether there is anything that you want to comment on it, or whether you ought to have a chance, since they make representations, to respond.

Mr. CASSELL. Yes, I appreciate the opportunity to respond. I haven't seen several of those letters. I would say that I have litigated against several of those defendants—I'm sorry—defense attorneys. And I think what may be going on there is a reaction that some of them have, when they're suggesting that my views are unusual. I think what they're saying in some of those cases is that it's unusual for victims of crime to have legal representation.

In Mr. Bugdon's case, I, on a pro bono basis, represented an 11-year-old boy who had been sexually assaulted by his father. The case was charged as a first-degree felony and dropped to a misdemeanor. And the boy was not given an opportunity to exercise his constitutional right to be heard, and I think this was the first case in which Mr. Bugdon had seen an attorney represent a victim of crime to try to assert a constitutional right, and I took that case to the Supreme Court and obtained a decision from the Utah Supreme Court just last week, that in many respects vindicated the rights of crime victims and sets forth a precedent that I think will long stand for the proposition that victims of crime have a voice in the criminal justice system.

In Mr. Yengich's case I handled a sexual assault case of, I believe it was a 5-year-old girl. The case had been going on. I think there had been, if I am remembering correctly, 11 continuances at the request of Mr. Yengich. When the 12th continuance was requested, the family came to me. On a pro bono basis I agreed to represent the family, and I objected to that continuance on the basis of a victim's right to a speedy trial. And again, I think Mr. Yengich was surprised to hear an attorney articulating and speaking for a crime victim. Apparently those experiences have allowed them to reach their conclusions. They are certainly entitled to reach their conclusions, and I respect that right, but I respectfully disagree with their ultimate conclusion.

Senator KENNEDY. Well, I would hope that you would have a chance. I read through those. I did not see those mentioned. Just looking at Mr. Enderton, mentioned that Mr. Yengich is a criminal attorney. Many people are saying that his comment should carry little weight, and comments generally go that he only wrote what was expected because he was a liberal Democrat and a criminal defense attorney. "I am neither liberal or a Democrat. As a matter of fact, I am a very staunch Republican with very conservative views."

And then he continued on. "I believe that Mr. Cassell is neither qualified nor independent enough to adequately serve on the Federal Bench." And "Mr. Cassell has consistently pushed ultra conservative positions." And it continues on.

But I think you ought to have a chance to just respond to these questions. Obviously, there are some serious questions, at least in my own mind, given the comments that you have made, about the characterizations that you made both in terms of the Court and in terms of the holdings that are of concern, to whether you will be able to be sufficiently independent given these strong views and whether people will be able to achieve that kind of independence.

But I would like to submit some other written questions, Mr. Chairman.

Chairman LEAHY. The record will stay open for all members to submit questions.

Chairman LEAHY. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman, and if your time is wrapping up and you need me to stop, please just let me know. I just have a few questions I would like to ask.

First, I would like to——

Chairman LEAHY. Actually, what I was thinking we may do is recess until 12:30 and then come back and begin with the Senator from Alabama, if that would fit his schedule.

Senator SESSIONS. I wouldn't ask the committee to come back for me. If you are coming back for somebody else——

Chairman LEAHY. I would come back for you any time.

Senator SESSIONS. No. I am serious. As far as I am concerned, these witnesses have answered the questions effectively and I see no reason to continue the hearing for my questions.

Chairman LEAHY. How long did the Senator from Alabama want?

Senator SESSIONS. Five minutes would be sufficient.

Senator KENNEDY. Do you want me to stay for five minutes?

Chairman LEAHY. No, no, that is okay.

Go ahead.

Senator SESSIONS. I salute President Bush for the excellent nominees that he has made.

Judges Africk and Davis, congratulations to you for being able to sit here quietly. I know you appreciate that. [Laughter.]

Chairman LEAHY. I have a couple of questions for them.

Senator SESSIONS. I thank the President for making those good nominations, and I would note that Judge Davis represents the second nominee that President Clinton had submitted that was not confirmed that President Bush has now submitted for confirmation. I think that demonstrates his desire to be bipartisan in his nominations.

With respect to the Fifth Amendment right against self-incrimination, I think it is important to note what the Constitution says. It says, "No person shall be compelled in any criminal case to be a witness against himself."

Professor Cassell, you have worked on those warnings and studied all the law and that sort of thing. I believe it was suggested that one of the lawyers criticized you because you asserted that criminals have gotten off as a result of the *Miranda* warning.

I was a prosecutor for almost 17 years, and it is an absolute fact that everyday in this country criminals are getting off as a result of *Miranda* applications, for two different reasons. One is some technical violation in its administration, and the second reason is that they hush up. I have always believed that confession was good for the soul myself.

Surely, you can't be compelled to be a witness against yourself, but in the history of this country, until *Miranda*, the courts have never said you had to read somebody the Constitution before you asked them a question. We might as well tell them, if you are plain idiot, don't answer. Why don't we tell them that?

Law enforcement has been hampered as a result of not being able to ask people questions without these warnings that have reduced a percentage—10, 20, 30, 40 percent of the witnesses who may have cooperated previously now no longer do so, making it more difficult often to apprehend repeat, serial offenders, like that is the only crime they are going to commit.

That is my little view of this, Mr. Chairman. I know it is not politically correct, but I remember the Supreme Court ruling.

Chairman LEAHY. The Senator has got another 30 seconds out of that 5 minutes.

Senator SESSIONS. All right.

Chairman LEAHY. At the end of that 30 seconds, we will recess for one-half hour and then come back.

Senator SESSIONS. Mr. Chairman, I am satisfied with my time at this time. I would not ask the committee to come back.

Chairman LEAHY. I want the Senator from Alabama to know that when we come back at twenty of one, he would still be recognized, if he wanted to be, and if he wants to take an hour or two hours, I will be glad to give it to him. I am not trying to cut him off. Senator Hatch and I discussed this earlier. I am trying to avoid having to go into this evening by doing it this way.

We will stand in recess until twenty of one, and if the Senator from Alabama wishes to come back, I assure him he will be given whatever amount of time he wants.

[The committee stood in recess from 12:10 p.m. to 12:41 p.m.]

Chairman LEAHY. Gentlemen, I thank you, and I apologize for the delay.

Judge AFRICK, could I ask you a question? You served as a Federal magistrate in the Eastern District of Louisiana for more than 10 years. Am I correct?

Judge AFRICK. Yes, Senator.

Chairman LEAHY. I know in my own State of Vermont how valuable the magistrates are just to keep things moving along, and actually doing a lot more than that. But what do you think would be the most challenging thing for you to go from being a magistrate to a district judge?

Judge AFRICK. Well, actually two things I thought about, Mr. Chairman. The first thing would be that I will be handling more dispositive motions than I handle now. As you know, unless there is a 28 U.S.C. 636(c) consent, we have no authority to handle most civil cases. And in addition to that, I will have felony jurisdiction and I will be able to preside over felony criminal trials.

Chairman LEAHY. Are you looking forward to that?

Judge AFRICK. Yes, sir, very much so.

Chairman LEAHY. Now, district judges, especially if they get to know the magistrates better and all, have to rely, and they do rely on magistrates a lot. But does a district judge have a responsibility to review the legal research done by a magistrate, or should the district judge just accept that as the final word?

Judge AFRICK. As you know, Mr. Chairman, we write reports and recommendations on a number of things to the U.S. district court that can either accept or reject our recommendations. Depending on whether it is an issue of law or whether it is a question of fact, the standard would differ.

Chairman LEAHY. But do you feel that the district judge has a responsibility, though, to make sure you are right?

Judge AFRICK. Yes, sir. I think the district judge has to look at the entire report and recommendation, and feel comfortable that the law has been complied with.

Chairman LEAHY. Let me ask you a question. You have been a member of the bar for over a quarter of a century. Of course, you are welcome to join any group that you want, but some raise the point that you joined the Federalist Society when this new administration came in. Did that have anything to do with wanting to be on the Federal court bench or are we just talking about a coincidence here?

Judge AFRICK. Senator, what actually happened is my next-door neighbor is a Federal judge, U.S. district court judge in the Eastern District of Louisiana. He is on the advisory committee at the Federalist Society, and we had been speaking and he spoke to me about joining the Federalist Society.

I knew it to be an organization that encourages scholarly debate on things like separation of powers and judicial restraint. I did not know it to lobby for political-type issues, and I ended up joining and ended up going to two luncheon meetings, both of which I was late for.

Chairman LEAHY. Usually, if I go to a luncheon meeting of any group that I belong to and if I am late, I find that I end up chairing whatever committee there that I least want to be on. That is always a dangerous thing to do.

Judge AFRICK. I will be careful.

Chairman LEAHY. I assume it is your position that you would feel bound by the decisions of your circuit even if you disagreed with them personally.

Judge AFRICK. Mr. Chairman, I am committed to stare decisis. It is a positive thing, it is a matter of judicial restraint. I consider it to be an anchor of the legal system. I am not an elected representative of the citizens and I will certainly pledge to you that I will be bound by that doctrine.

Chairman LEAHY. It certainly makes everybody's life a lot easier.

Judge AFRICK. Yes, sir, it does.

Chairman LEAHY. Professor Cassell, I want to go back to the—is it *Burdine* or *Burdeen* case?

Mr. CASSELL. I believe it is the *Burdine* case.

Chairman LEAHY. *Burdine*, Calvin *Burdine*. There was some discussion of that earlier here, and the three-judge panel of the Fifth Circuit had ruled that a sleeping lawyer can be effective counsel for a defendant as long as the lawyer does not doze during important parts of the trial.

Of course, ultimately the full court of appeals reversed that. But the day after the original three-judge panel, you said, “The issue before the fifth Circuit is whether the disputed”—my emphasis—“disputed claim about a defense attorney nodding off for a few minutes during the trial is going to automatically lead to an invalidation of the death penalty and automatically lead to a new trial. The Fifth Circuit has just said let's just take a look at the facts.”

Well, to begin with, this was not a disputed claim. The prosecution and the defense counsel neither disputed the claim about the



defense attorney nodded off. In fact, the prosecution accepted that they didn't sleep just for a few minutes, as you suggested, but for substantial portions of the trial. They did say that they thought he was awake during critical periods. Obviously, the full circuit found that a sleeping counsel is a sleeping counsel, and reversed.

So let me just ask you this: If, as the prosecution had accepted, a defense lawyer falls asleep during substantial portions of a capital murder trial, is that providing effective assistance of counsel?

Mr. CASSELL. Absolutely not, Senator.

Chairman LEAHY. How would you feel if you were presiding over a case and you found either counsel nodding off? What would you do as a judge?

Mr. CASSELL. Immediately take corrective action.

Chairman LEAHY. Which would be?

Mr. CASSELL. Among other things, waking them up, but that would be the——

Chairman LEAHY. Well, no, but I mean it may be different, depending upon the circumstances. It may be a case, too, where seeing something like that could also create a real problem with the jury, too. I assume you would be cognizant of that.

Mr. CASSELL. Certainly, Mr. Chairman. My point was——

Chairman LEAHY. But you wouldn't let the sleeping go on. Is that what you are saying?

Mr. CASSELL. Among other things. I mean, the point is that is clearly ineffective assistance of counsel and clearly far below the standards of professional conduct that we expect of both defense counsel and prosecuting attorneys.

Chairman LEAHY. In 1993, you stated before the House Judiciary Committee that newly discovered evidence submitted after trial is almost invariably unreliable. Since 1993, we have seen more than 45 individuals on death row released. In 11 of these cases, DNA was a very significant part. In a number of cases where people have been locked up for rape or other assault, DNA has been dispositive in proving not only did they have the wrong person, but then showing who the right person was, even the wrong person may have been there for years.

Do you feel that newly discovered evidence submitted after trial is, to quote you, "almost invariably unreliable?"

Mr. CASSELL. I am not certain about that quotation, Senator Leahy, but let me say this about that very important issue. I think it is a critical that those who have been convicted of capital crimes, no less than those who have been convicted of other crimes, have the opportunity to present newly discovered evidence through the courts, not just to the courts, in fact, but to the executive branch through the clemency process.

We have actually in Utah just last legislative session enacted legislation to provide DNA testing, again not just for capital cases but for all cases in which it might exonerate those who have been wrongfully convicted, and I have supported that legislation.

We have also started a very interesting project out in Utah. It is called the Rocky Mountain Innocence Project. My old faculty colleague, Lionel Frankel, who recently passed away, has established the project. I have been involved in helping them fund-raise.

What they are trying to do is to investigate particularly DNA cases, but other cases as well, in which there may be a situation in Utah or other Rocky Mountain States where there could be an innocent person wrongfully convicted. And I have offered my services once they identify their first case. They are still working in the fundraising stages, but I have offered my services on a pro bono basis to try to make sure that that kind of a terrible miscarriage of justice doesn't go forward.

Chairman LEAHY. Thank you.

Let me ask Judge Davis something. You are currently a judge for the Court of Common Pleas in the—is it the First Judicial District?

Judge DAVIS. The First Judicial District, sir, yes, sir.

Chairman LEAHY. In your questionnaire, one of the things that struck me is you have participated in a variety of pro bono projects. I have been a very, very strong advocate of judicial candidates being involved in pro bono activities, as I am for all lawyers. Lawyers have a fairly privileged part in society and it is one way of giving things back.

You helped in the early stages of establishing a drug treatment court in Philadelphia. You were the project coordinator for a special initiative intended to assist substance-abusing females in addressing their drug use, and housing, education and health. You chaired the committee which restructured the pre-trial release procedure in Philadelphia.

Would it be safe to say that you believe lawyers should be involved in pro bono work?

Judge DAVIS. Without a doubt, sir. I think that as you indicated previously, to occupy the exalted position of an attorney is a privilege. It is nothing that is given to you, it is nothing that is guaranteed to you, but if you enjoy that privilege, there is a reciprocal responsibility to return something to the community.

I had the good fortune of being a Common Pleas judge for 15 years, of being the Director of the Criminal Division for about 8½ to 9 years, and my objective was to improve the operation of the Criminal Division in a lot of different ways so that we could satisfy our responsibility to the public, so that we could satisfy our responsibility to all elements of the community without negatively impacting upon public safety. And the things that you have mentioned, sir, are elements of what I was able to do with the support and cooperation of a lot of people in Philadelphia, sir.

Chairman LEAHY. Judge, it is over 860 days since President Clinton first nominated you, and you have been re-nominated by President Bush. Probably being here today compresses some of that time in your mind.

Will you give me your assurance, if you go on the district court bench, that you will do as you have done in the past and you will view everybody who comes before that court, whether they are plaintiff, defendant, rich, poor, whatever their political background, Republican or Democrat—that you will look at them through the same prism, with the same fairness?

Judge DAVIS. I will do my absolute best, sir, to give everyone who appears before me full and complete justice.

Chairman LEAHY. Thank you.

Judge DAVIS. And I would say that I am appreciative to the support that I have gotten from members of this committee over the years, and to the fact that I have a hearing today. But also I am especially appreciative to both President Clinton for nominating me and President Bush for nominating me, as well, because it is not a question of right and I feel distinguished that both Presidents have nominated me, sir.

Chairman LEAHY. Thank you very much.

Senator SESSIONS?

Senator HATCH. Well, could I—

Chairman LEAHY. Of course, Senator Hatch.

You will yield to Senator Hatch?

Senator SESSIONS. Yes.

Senator HATCH. Thank you very much.

You don't mind, Senator SESSIONS? I would be happy to yield to you if you would prefer.

Senator SESSIONS. No, no.

Senator HATCH. All three of you have my support. I think all three of you will make excellent district court judges. I am particularly happy to see you finally get here, Judge Davis.

Judge DAVIS. Thank you, sir.

Senator HATCH. If we can have people like you on the Federal district bench, all three of you, we are going to continue to do what is right in this country.

Now, let me just ask a few questions to you, Professor Cassell. There have been some issues that have been raised. First of all, I don't think anybody in their right mind would question your integrity. You just have too much bipartisan support to have your integrity brought into question.

I just would like to put a number of letters into the record, and just a few of them, but enough that it makes a difference.

The State University of New Jersey, Rutgers University School of Law; this is George C. Thomas, who is a professor of law, the Alexander P. Waugh Distinguished Scholar. He says, "I write to support enthusiastically and without reservation the nomination of Professor Paul G. Cassell to be a Federal district judge. I have known Paul for many years and I believe he will make a highly capable judge. I wrote a letter supporting his tenure at the University of Utah College of Law several years ago and he has continued to shine as a legal thinker and writer."

Then he goes on about how intelligent you are, and so forth. Then he says, "We have dueled in a friendly way in print." So you have both argued with each other, but then finally he says, "Professor Cassell and I disagree on some issues, and yet respect each other. This fact alone says volumes, I think, about how effective he will be as a judge in dealing with lawyers and others in his courtroom. I predict that Paul Cassell will research the law energetically, understand it as well as anyone can, and apply it fairly and consistently."

Douglas E. Beloff, who is a Democrat, an associate professor of law at Lewis and Clark Law School in Portland, Oregon, says, "I am a registered Democrat. It has been my pleasure to know Professor Paul Cassell personally and professionally for several years and I am writing to urge you to confirm him."

He says, "As his résumé reflects, Professor Cassell is brilliant. He is one of the quickest conceptual thinkers and writers I have ever met. There is no question he is very well qualified for the district court position. I would like to speak to Professor Cassell's character and temperament, which are extremely well suited for the district court position. And despite his remarkable intellect and achievement, Professor Cassell is very gracious and modest. I am aware of him in circumstances when others were being less than respectful and he always responded courteously and with dignity. He treats everyone kindly, listens very well, and responds thoughtfully. I have also had occasion to see him with his wife and family. Professor Cassell is an extremely devoted husband and father. In sum, Professor Cassell's personal values exceed his intellectual genius."

Then he goes on to say, "I understand that Professor Cassell litigated the issue of whether a Federal statute passed by the House and Senate altered the Miranda warning. Some may see this as a sort of talismanic test of how Professor Cassell views all civil liberties. Nothing could be further from the truth. As the only professor who has written a law book on the rights of crime victims in the criminal process, I can say that Professor Cassell has been a staunch defender of the civil liberties of crime victims in the criminal process. Paul Cassell and Laurence Tribe, of Harvard, who argued an election issue for Gore, have joined in their support of civil liberties for crime victims. Therefore, to have an impression that Professor Cassell is somehow generally anti-civil liberties is frankly laughable. In my experience of him, Professor Cassell's views, like most thoughtful legal scholars, are subtle and complex, and cannot credibly be branded with any label. For all these reasons, I urge you to speedily confirm Paul Cassell as a District Court Judge for the District of Utah. The citizens of Utah could not find a better legal mind or a more decent human being."

There are a number of other letters that I will put in the record at this point.

You have said several times, Professor Cassell, that, if confirmed, you will follow the law. One of the Senators here said, well, that is a mantra that everybody says when they come before the committee. I suspect not everybody, but almost everybody does say that because it is true.

But some of my colleagues have questioned your views on a couple of discreet areas. So I would like to know why should we believe that you will balance your views of capital punishment with the rights of criminal defendants?

Mr. CASSELL. Well, I think the record is clear on that, Senator, that I have worked on issues such as the Rocky Mountain Innocence Project to try to make sure that those who are wrongfully convicted have some kind of a mechanism to set those wrongful convictions aside. I have even written law review articles in which I have criticized U.S. Supreme Court decisions that upheld capital sentences. So I think there is a balanced record there.

I have a number of years as a prosecutor upholding the law, and all of those factors I think make it quite clear that I will follow the law. That is not some mantra that I am repeating, but that is what my record indicates over the years.

Senator HATCH. On *Miranda*, I think we all have to admit that *Miranda* has been both praised and criticized by brilliant people, good people, honest people. I think both sides have made points that really must be considered in the overall concept of the law.

On the other hand, the Congress did pass Section 3501, and we in Congress believe that when we pass a law it ought to be followed unless it is found to be unconstitutional. So it was legitimate for you, it seems to me, to argue that 3501 should at least protect the right under certain circumstances for confessions to come into evidence, just to present that as a broad issue.

You have been criticized here today because you have argued the other side, but you have said you lost. Now, is there any reason in the world why you would not enforce in your court the *Miranda* warnings?

Mr. CASSELL. Absolutely not, Senator. I argued the case and I lost 7 to 2, and I understand 7 is more than 2, many more than 2, and I certainly will follow—

Senator HATCH. Well, Section 3501 was a legitimate statute at the time. Until the Court said that it didn't overrule *Miranda*, it was legitimate to argue that.

Mr. CASSELL. And, in fact, one of the situations in my home State—we had a Tenth Circuit ruling on point upholding 3501. So when I was arguing these things, I was following what the Tenth Circuit had ruled. And, of course, as a district court judge in Utah, I will follow not only the Supreme Court's decisions, but the Tenth Circuit's decisions as well.

Senator HATCH. Well, I am saying even those who have been on the opposite side of you on the *Miranda* issue have argued that you will be fair in applying the law now that it is established.

I mean, I look at Michigan law professor Yale Kamisar. Now, he is the Nation's leading advocate, or should I say leading academic defender of *Miranda*, and he said, "Cassell is a smart guy and even though he doesn't like *Miranda*, I think he would apply conscientiously it as a judge."

Do you disagree with that statement?

Mr. CASSELL. Not at all.

Senator HATCH. I don't either. I know that you will.

Do you think that Mr. Kamisar's confidence in your ability to act fairly as a judge is well placed?

Mr. CASSELL. I do, Senator.

Senator HATCH. Now, you have been criticized here today for referring to the Supreme Court's decision in *Dickerson* in one of your law review articles as an example of an imperial judiciary. It seems to me that at least a couple members of this committee have made the very same or similar allegation, first, with regard to the Court's view of the Violence Against Women Act—that happens to be an Act that I was prime cosponsor of—in the *Morrison* case, and just last week with regard to a number of recent cases.

Do you think that such comments, whether by a Senator or a law school professor, inherently indicate a lack of respect for *stare decisis* and the binding power of Supreme Court decisions?

Mr. CASSELL. Not at all, Senator, and I am glad you mentioned—I am not sure I came up with the phrase "the imperial judiciary."

It may have been borrowed from some member of this committee, but I think I did use that in one of my articles.

Senator HATCH. Now, you are not blaming the august members of this committee for inappropriate language like “imperial judiciary,” are you?

Mr. CASSELL. No, absolutely not. [Laughter.]

Chairman LEAHY. If they have, if they are ever up for a judgeship, we will ask them the same question.

Senator HATCH. And I would imagine we would be fair in saying that they have a right to say what is on their mind and they have a right to say that they will be bound by stare decisis and by the law as it is. I think we will take their word for it, too, as I hope this committee will take your word for it. You have a reputation of impeccable honesty and integrity, and anybody who doesn’t take your word for it, there has got to be some question about their impressions.

Let me just put it this way: It is not unfair to criticize the Supreme Court. That is what law professors do. They sustain the Supreme Court, they argue for it, and they criticize it. That is how students learn.

When you teach your criminal law classes, do you cover both sides of the issues, or do you just cover the ones that you feel are appropriate?

Mr. CASSELL. We absolutely cover both sides, majority opinions, dissenting opinions, and both sides of the issue.

Senator HATCH. I presume with the Socratic method that you really forcefully advocate sides that sometimes you don’t accept.

Mr. CASSELL. Well, that is part of the academic process, is to understand both sides of the issue.

Senator HATCH. Well, there is a lot more I could say, but the important thing here is your integrity, your ability, your reputation; the fact that you are one of the leading authorities on criminal law; all the pro bono work that you have done, helping people who didn’t have the money to pay for their own attorneys; the work that you have done for victims’ rights, rightly or wrongly in the eyes of some members of this committee, but sincerely done; the really hundreds, if not thousands of law students that you taught over the years; the associations that you have.

To me, I don’t see how anybody can really justly criticize you. The fact that you might differ on some points of law—my gosh, we differ up here on points of law. We differ with the Federal judiciary on many, many points of law. It is just something that happens.

I just want to say I have seen a lot of people in my 26 years on this committee come before this committee as potential judges—district, circuit, and Supreme Court—and I have got to tell you, anybody who looks at your career has got to say you rank with the best of them. That is why you have been nominated, that is why Senator Bennett and I have recommended you, and that is why we believe in you.

I can personally testify that you will act in a very honorable, respectful way of the law and of the people and litigants that come before you and of the attorneys who appear before you. That I know will be true, and that is one reason why you were nominated.

Keep in mind, I practiced law in the Federal district court in Utah and for years we had a judge out there who didn't care what the law said. He was imperious. I happened to have liked him, and he liked me, but the fact of the matter was what he did in many cases was not right. And I have worked very, very hard to make sure that our district court out there does not have imperious people, if you want to use that term again, who ignore the law, who substitute their own predilections for what the law is, and who may not be respectful of the litigants that appears before them or the attorneys.

I know that you will be. That is one reason why we have made this recommendation to the Bush administration, and that is why, after meeting you, they are enthusiastically in support of you. And I hope this committee will do what is right by you, and I intend to see that they do.

So I appreciate all three of you. I am going to support all three of you. You are going to have an advocate in me, and I expect all three of you to become excellent judges in the Federal judicial system, because it is the judicial system in this country that has saved the Constitution, in my eyes, not the Congress of the United States, which may criticize some of your positions from time to time, but should not criticize your integrity.

Thank you, Mr. Chairman.

Chairman LEAHY. We will move Senator Hatch off the undecided list.

Senator HATCH. That was known before we started.

Chairman LEAHY. Senator Sessions, how much time would you like? Obviously, you can have whatever time you would like.

Senator SESSIONS. Seven minutes, just a few minutes.

Senator Hatch, you said it well about Mr. Cassell. Just looking at his record, there has been a commitment to public service. I know we seem to take pride that young people volunteer to defend criminals in court and work for them, but he has volunteered a lot of his time for victims. I don't think that should be held against him. I think it is a compliment.

But you also, I noticed——

Senator HATCH. He has defended people that have been accused, too.

Senator SESSIONS. Yes, and I think it is significant that with regard to the Rocky Mountain Innocence Project that you have helped the project in its fundraising, have offered legal services pro bono and to help the institute survive. So that, to me, says a lot in terms of your belief in fairness.

I have some things to say about *Miranda*. I know it is politically correct today to believe that no one can say anything bad about it, but I saw it when it came into effect. I saw the impact on the criminal justice system. I do believe it did have one good effect; it helped improve professionalism in the police department. My view is that could have been done in another way. It would have been just as effective without having as much adverse impact on the criminal justice system as a whole.

But let me just ask a couple of questions. What about *Miranda*? What was he charged with and what was his personal criminal history later?

Mr. CASSELL. As I recall, Senator, he was charged with forcible rape and had an extensive prior criminal record.

Senator SESSIONS. And the decision was a 5-to-4 decision by the Supreme Court, and that is when they imposed the *Miranda* rule, so to speak, as a prophylactic, as I recall.

Now, Chief Justice Warren, the liberal Chief Justice who issued that opinion—did he say this was a constitutionally-required remedy?

Mr. CASSELL. What he said in the opinion was he encouraged Congress and the States to consider looking at alternative ways of addressing the concern about police professionalism that you mentioned, while safeguarding the rights of law-abiding citizens. So there was that balance of competing interests there.

Senator SESSIONS. And he did not say in the majority in that case—even the 5 majority did not say that *Miranda* was constitutionally required, just as a prophylactic rule, isn't that correct?

Mr. CASSELL. That was certainly my understanding of *Miranda* and the subsequent decisions interpreting it, yes, Senator.

Senator SESSIONS. And with regard to people being on either side of that case, who was the Solicitor General who argued against the *Miranda* case?

Mr. CASSELL. It was Solicitor General Marshall, Thurgood Marshall, that took the position that voluntariness should be the test rather than some kind of warning requirement.

Senator SESSIONS. And that is basically your view?

Mr. CASSELL. My view, and the view, I think, of this committee in Section 3501, as I have articulated in my law review articles.

Senator SESSIONS. I don't think that is an extreme position. I think that is a position of real value that is worth thinking about.

With regard to the death penalty, in my personal view as a prosecutor, probably 90 percent of death penalty cases are really open and shut facts. There are some that are close and they deserve very careful attention. There is so much pressure in a death case. I know Senator Leahy as a prosecutor understands it.

You have got a horrible crime, a terrible situation with the victims, and you may not have a great deal of proof. So that puts the pressure on the system sometimes. You can't ignore the case, as you could a minor case with weak proof, and sometimes you can have a case come out adversely.

I am glad that you believe in the innocence project, that you would support new evidence that would show somebody to be innocent. I believe that is important, but it is clear to me that the Framers contemplated a death penalty in the Constitution. They make multiple references to capital cases and capital crimes and putting people to death. So they contemplated it. Fundamentally, it is approved by the Constitution.

Let me ask you this: Are you familiar with this new study from Emory University, entitled "Does Capital Punishment Have a Deterrent Effect?" Three professors there wrote it, and what did it conclude?

Mr. CASSELL. I am generally familiar with the study, Senator Sessions, and the conclusion there was that each execution would save a number of innocent lives. I forget the precise calculation that the professors came up with.



Senator SESSIONS. As I understand it, the report says that it could save up to 18 lives as a deterrent effect. If there is anything like truth there, we should be able in this country to carry out a legitimate death penalty, making sure that those who are innocent are not caught up in that net, prosecuting and punishing by death only those that clearly deserve it, and at the same time get a real impact on innocent lives that may otherwise have been lost.

The idea that there is no adverse impact by undermining the death penalty I do not believe is correct. I believe this Emory University study would confirm that.

Mr. Chairman, I would offer that for the record.

Chairman LEAHY. Without objection.

Senator SESSIONS. With regard to the "imperial judiciary," I am sure Senator Hatch has never used that phrase.

Senator HATCH. I have been a lot rougher than that from time to time. [Laughter.]

Senator SESSIONS. It is common around here. I have noticed a number of Senators use it.

Isn't it a way, Mr. Cassell, of just saying that when a judge acts apart from the statutory and constitutional power that he has been given, it is an imperial-like act; that since they are given a lifetime appointment without a vote of the American people, there is no way to answer to the American people; that judges have to have self-discipline and adhere to the law?

Mr. CASSELL. I think that is exactly right, Senator Sessions. That is one of the reasons I am seeking the position, is to try to follow the law rather than make the law, as I think has been done in some cases.

Senator SESSIONS. Well, your academic record as president of the Stanford Law Review, one of the great law reviews and one of the great law schools in America, your history of public service, your cogent writing, and your insight, I think, is important. But mostly I believe you are a man of integrity and ability, committed to the law, and you will enforce it whether you agree with it or not.

Thank you, Mr. Chairman.

Senator HATCH. Mr. Chairman, 30 seconds.

Chairman LEAHY. Of course, I will give you all the time you want. I just wanted to thank Senator Sessions for coming back. I know we had to cut him off earlier. I appreciate very much that he did come back.

Senator HATCH. I do, too. Just 30 seconds.

Just to set the record straight, you also supported Utah's recently enacted Post-conviction Testing of DNA Act, which is one of the first laws in this country that provides for State-financed testing of potentially exculpatory DNA evidence when DNA testing was not available at trial. You were one of the principal advocates for that.

Mr. CASSELL. I certainly—there were a number of people that worked on it, so I don't know if it would be fair to describe me as the principal advocate.

Senator HATCH. No, but I mean you would certainly support that.

Mr. CASSELL. I certainly supported it and I think it is really a valuable piece of legislation that is up and running today in Utah to deal with that circumstance.

Senator HATCH. So anybody who would think that you have the idea of placing capital punishment above justice certainly would be wrong?

Mr. CASSELL. Certainly, Senator.

Chairman LEAHY. Professor Cassell, are there any studies that would support the view that the death penalty may not be an effective deterrent?

Mr. CASSELL. Yes, there are, Senator. There are——

Chairman LEAHY. Are there credible ones?

Mr. CASSELL. Well, like many academic issues, there are studies on both sides.

Chairman LEAHY. In your view, are there credible ones?

Mr. CASSELL. That conclude that it is not a deterrent?

Chairman LEAHY. Yes.

Mr. CASSELL. I think there are credible studies on both sides of the question, yes, Senator. It is one of those, again, where you get a number of criminologists in the room. It is like having a number of economists in the room.

Chairman LEAHY. But you believe it is an effective deterrent?

Mr. CASSELL. I do believe it is an effective deterrent, yes, in some cases.

Chairman LEAHY. I have handled a lot of murder cases. I can think of a lot of them where it wouldn't have made the least bit of difference, family murders, things like that, and others where I suspect it might have. But that is not really the issue here.

I would mention on *Miranda*, there seem to be concerns that somehow a whole lot of people are going free as a result of this. When I became a prosecutor, *Escobito* came down within a matter of weeks after I became a prosecutor, and *Miranda* came down. I cannot remember a case where it made any difference.

I had the highest conviction rate of any prosecutor in Vermont's history at that time, and I think probably the highest since. I argued more criminal cases before our Vermont Supreme Court than all the States' attorneys—we call them States' attorneys in Vermont—than all the States' attorneys put together for that century, and I won every one of them.

I agree with Senator Sessions that it gave an opportunity to improve training of police officers, but in my personal experience I never found a case where it allowed somebody to go free. I would just mention that for whatever it is worth. I don't say that as being scientific, but as I say that as one who usually won his cases.

Mr. CASSELL. Unfortunately, we may not be—the people of various States may not be lucky enough to have you representing them in all these cases.

Chairman LEAHY. Well, I am——

Mr. CASSELL. We have a number of good prosecutors in Utah, but I will say sometimes they need a confession to make the case.

Chairman LEAHY. And we need the Constitution to hold us together.

Gentlemen, I thank all of you.

Senator HATCH. Can I just ask one? What about Miranda himself? He was set free.

Mr. CASSELL. He was re-tried and the only reason he was——

Senator HATCH. Well, he was set free and then he went on to rape somebody.

Mr. CASSELL. The only reason he was able to be re-convicted was he told his wife that he was going to get out now, and then she turned State's evidence and that was a new confession that enabled his re-conviction.

Senator HATCH. Right.

Chairman LEAHY. With that, gentlemen, Judge Africk, Professor Cassell, and Judge Davis, I thank you all for being here and being so patient. I also want to compliment your families, parents, children, and everything else.

You children should tell your parents that they owe you. You have sat through this very, very patiently.

Thank you very, very much.

We stand in recess.

[Whereupon, at 1:19 p.m., the committee was adjourned.]

[Submissions for the record follow.]

[Additional material is available in the Committee files.]

## SUBMISSIONS FOR THE RECORD

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July 3, 2001

Patrick J. Leahy, United States Senator  
Chairman of the Senate Judiciary Committee  
224 Senate Dirks  
Washington, D.C. 20510

Dear Senator Leahy:

I write this letter to express my concerns regarding the recent proposed appointment of Paul Cassell to the position of Federal District Court Judge.

I am a criminal defense lawyer and have been practicing in Utah for in excess of thirty-four years. I have tried cases in the Federal Courts of this country in California, Colorado, Hawaii, Michigan, and Texas. I have served as the past President of the Utah Association of Criminal Defense Lawyers and am currently an active member of the National Association of Criminal Defense Lawyers. I have played an active role in the political and judicial communities of Utah for the past thirty-three years.

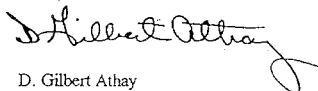
I have debated Mr. Cassell and have followed his career very closely. It is my opinion that Mr. Cassell does not have the judicial demeanor nor the intellectual integrity to be a United States District Court Judge. He is in my mind a judicial right wing ideologue who will impose his philosophy upon the system without regard to its affect.

Mr. Cassell has limited court room experience which should be a prerequisite to the trial bench. Additionally, Mr. Cassell has limited ties to the State of Utah. He is not a native here and came to Utah in his capacity as a Law Professor.

My colleague, Mr. Ron Yengich, has today written you a letter in opposition to Mr. Cassell's nomination. Let me echo his sentiments and especially the points made in the last two paragraphs of his letter: the writings of Mr. Cassell speak volumes about the philosophies this person would bring to the federal bench. Such philosophies and attitudes should not be acceptable for the federal trial bench. I urge you and your colleagues to oppose the nomination of Mr. Cassell.

If I can be of any further assistance please feel free to contact me.

Sincerely,

  
D. Gilbert Athay

DGA/slb

03/18/02 MON 20:26 FAX

03-18-02 03:33pm From-Northwestern School Of Law

#5037685671

T-679 P.002/002 F-277

0005

NORTHWESTERN SCHOOL of LAW  
of LEWIS & CLARK  
COLLEGE



To Honorable Members of the United States Judiciary Committee. 5-18-02

Re: Confirmation Hearing of Professor Paul Cassell, University of Utah  
as District Court Judge for the District of Utah.

Dear Senators,

My name is Douglas Beloof and I am an Associate Professor of Law at Lewis and Clark Law School in Portland, Oregon. I am a registered Democrat. It has been my pleasure to know Professor Paul Cassell personally and professionally for several years. I am writing to urge you to confirm Professor Cassell to the Federal District court for the District of Utah.

As his resume reflects, Professor Cassell is brilliant. He is one of the quickest conceptual thinkers and writers I have ever met. There is no question that he is very well qualified for the District Court position. I would like to speak to Professor Cassell's character and temperament which are extremely well suited for the District Court position. Despite his remarkable intellect and achievements, Professor Cassell is very gracious and modest. I am aware of him in circumstances when others were being less than respectful and he always responded courteously and with dignity. He treats everyone kindly, listens very well and responds thoughtfully. I have also had occasion to see him with his wife and family. Professor Cassell is an extremely devoted husband and father. In sum, Professor Cassell's personal values exceed his intellectual genius.

I understand that Professor Cassell litigated the issue of whether a federal statute, passed by the House and Senate, altered the Miranda warning. Some may see this as a sort of talismanic test of how Professor Cassell views all civil liberties. Nothing could be further from the truth. As the only Professor who has written a law book on the rights of crime victims in the criminal process, I can say that Professor Cassell has been a staunch defender of the civil liberties of crime victims in the criminal process. Paul Cassell and Laurence Tribe of Harvard (who argued an election issue for Gore), have joined in their support of civil liberties for crime victims. Therefore, to have the impression that Professor Cassell is somehow generally anti-civil liberties is frankly, laughable. In my experience of him, Professor Cassell's views, like most thoughtful legal scholars, are subtle and complex, and cannot credibly be branded with any label. For all these reasons I urge you to speedily confirm Paul Cassell as District Court Judge for the District of Utah. The citizens of Utah could not find a better legal mind or a more decent human being.

Douglas E. Beloof

BUGDEN, COLLINS & MORTON, L.C.

Attorneys at Law  
623 East 2100 South  
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WALTER F. BUGDEN, JR.

TELEPHONE  
(801) 467-1700  
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(801) 467-1800

June 21, 2001

VIA FACSIMILE and U.S. MAIL

Honorable Patrick J. Leahy  
433 Russell Senate Office Building  
United States Senate  
Washington, D.C. 20510

Dear Senator Leahy:

I am a criminal defense lawyer in Salt Lake City, Utah. I write to inform you that Professor Paul G. Cassell would be a terrible selection for the District Court in the Central District of Utah.

Professor Cassell is an extremist pushing an ultra conservative agenda. It is his solemn purpose, as far as I can tell, to eviscerate and further erode the constitutional protections that stand between the government and the ordinary citizen.

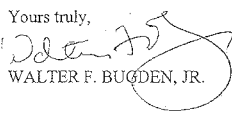
The Republicans love to talk about activist judges. Utah's Senator Hatch used the activist label to oppose many of President Clinton's judicial appointments. Paul Cassell would be no different; it is simply that he has a conservative agenda. Professor Cassell has made it a practice to find model cases to push his conservative judicial agenda. He frequently intervenes in cases in an effort to change the law and further erode our constitutional protections.

There is no rationale reason to believe that Professor Cassell will do otherwise if appointed to the bench. He will not follow the law. Rather, he will use every opportunity to create new law. No constitutional protection will be safe or respected should Professor Cassell take the bench.

Professor Cassell's extremism will prevent him, in my opinion, from being fair and impartial. In his courtroom, one could expect judicial conservatism unencumbered by constitutional protections.

Please do not confirm this zealot.

Yours truly,

  
WALTER F. BUGDEN, JR.

WFB/khj

03/18/02 MON 13:57 FAX 435 645 7098

FACTORY STORES @ PC

002

The Honorable Orrin Hatch  
 Ranking Member, Committee on the Judiciary  
 152 Dirksen Senate Office Building  
 Washington, DC 20510-4402

Dear Sir,

I am writing you today to make you aware of why I feel Paul Cassell would make an excellent choice for a Judge.

Life brought circumstances to my family & I that we had never imagined we would have to deal with. We found ourselves thrust into the U.S. legal system. We were totally unprepared for this. We found the legal system to be confusing, contradictory & unsympathetic. We were in great need of help. Help to get us through, help to understand, and help to find justice. We began calling attorneys on the phone in search of the information that we needed. Many phone calls later, we did find someone who recommended Paul Cassell.

We called Paul Cassell, and he was the first attorney who listened to us with interest and understanding. He advised us with no hesitation, and immediately said he would take our case – Pro-Bono. We then began our relationship with Paul.

Paul worked long and late hours on our case. We found him to be honest and forthright about what was going on with our case. He explained in plain terms what exactly would happen at our hearings. He made us aware of all possibilities, from both perspectives of the case. He saw our case through to the Utah Supreme Court.

Our case did not have the results that we had hoped for, however, we as a family, now have some closure to a very tragic situation. We all feel that due to the work Paul Cassell did for us, at no financial gain for himself, we did everything that could possibly have been done to get the justice we feel we deserved. We can now start to move forward with our lives, putting the tragic past behind us. In particular, my fourteen-year-old son, is now starting to make progress and feel good about himself. He knows that he has helped to make the pathway a little easier for other people in the same situation.

I feel that Paul has all the qualities a judge for our country should have. He is honest, forthright, concerned about whether or not justice has been served. We spent time with him, had many conversations with him, where we came to a clear understanding of how much he cares for the people of our country. We could see how important the justice system is to him. There are not many attorneys that would take on a case Pro – bono, where he is going to have to spend many hours of his own personal time, just to help people in need.

I recommend Paul Cassell highly, for a judgeship. If you are interested in what is going to be best for the people of our country, I truly feel that you are not going to find any better man for the job.

Thank you for your time and consideration,

*Cynthia F. Casey*  
 Cynthia F Casey

Mar. 18. 2002 2:47PM

No. 4662 P. 1/1

*Brandon Cummings*

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2829 Dallas NE  
Albuquerque, NM 87110  
Bus: (505) 400-2349  
cummingsbc@yahoo.com

Senator Jeff Bingaman  
Via facsimile (202) 224-2852

Senator Patrick Leahy  
Via facsimile (202) 228-0861

Monday, March 18, 2002

*Re: My Vehement Opposition to the Appointment  
Of Paul Cassell to the Utah Federal Court*

Dear Senators:

I am writing to you as a New Mexico constituent with regard to the proposed appointment of Paul Cassell to the Federal District Court in the State of Utah. By way of introduction, I am a student at the University of New Mexico and sociology major.

In my capacity as a student, I have the misfortune of being compelled to address some of Mr. Cassell's "studies." Mr. Cassell is known throughout academia for his general dishonesty and, especially, for his specious manipulation of statistics to justify his anti-liberties agenda.

Mr. Bingaman, as my representative in the Senate, and Mr. Leahy, in your role as Chairman of the very important Judiciary committee, I hope you will represent me and prevent this dishonest anti-rights zealot from masquerading as an impartial administrator of justice.

Thank you for your time and assistance.

Sincerely,

  
BRANDON CUMMINGS



03/18/2002 14:21 PAA 305 842 0761

FREED-BOYD-DANIELS

002/003

LAW OFFICES OF  
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 ALBUQUERQUE, NM 87125-3328

March 18, 2002

Honorable Jeff Bingaman  
 703 Hart Senate Office Building  
 Washington, DC 20501

Re: No to Cassell Nomination for United States District Court

Dear Jeff:

I have just learned that Utah Law Professor Paul Cassell has been nominated for a federal judgeship and that the Senate Judiciary Committee is hearing the matter tomorrow. As a lawyer and a law teacher, I am familiar with the notorious and extreme right-wing ideological agenda of Professor Cassell and am alarmed at the prospect of his being vested with the powers of a federal judge.

Professor Cassell is a well-known activist for the extreme right on matters relating to constitutional and criminal justice, and repeatedly takes positions to the right of Justices Rehnquist, Thomas and Scalia. For example, just last year in the *Dickerson* case, those justices decisively rejected Cassell's eight-year crusade to overturn the *Miranda* decision and to turn the backs of the courts on the important constitutional principles it has embodied for decades.

He has also been a crusader against reform of the abuses involved in imposition of the death penalty in this country. Despite the documentation of the undeniable reality that innocent people end up on death row, he has repeatedly taken the position that no such problem exists and has published distorted analyses of the cases involved. As you may recall, my partner David Freedman and I were appointed some years ago to represent a man who had confessed to a murder for which four innocent members of a motorcycle club were falsely convicted and were awaiting execution in Santa Fe. The corroborating evidence of his confession was overwhelming and left no doubt whatsoever of the innocence of the four men on death row. Other similar cases surface with disturbing frequency around the country and are taken seriously by all fair and thoughtful observers, even most of the ardent supporters of the death penalty. Professor Cassell, by contrast, is such an ardent supporter of executions that he has publicly taken the position, in speech and in publications, that the problem of executing the innocent simply does not exist. This kind of denial approach to incontrovertible facts inconvenient to one's prejudices is a disturbing trait in a prospective judge.

Aside from the extreme nature of his views, his overzealous advocacy in support of those views calls into question his ability to be fair and impartial in criminal matters.

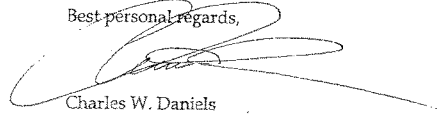
FREEDMAN BOYD DANIELS HOLLANDER GOLDBERG &amp; CLINE P.A.

In both his anti-Miranda and pro-death penalty crusades, Cassell has drawn criticism from his peers for intellectual dishonesty and statistical manipulation. Several law review articles document Cassell's willingness to twist facts to support his anti-rights agenda.

I rarely voice opposition to judicial nominees, even those with whom I disagree strongly. I would fully support his right as a professor, a lawyer or a citizen to hold and to express his own extreme views on the constitution or any other public policy issues, but that involves a different question than the one we must face when we are contemplating vesting such a person with the awesome power of a federal judge to protect and defend our constitution and to administer justice impartially to all who come before him. This nomination goes far beyond differing philosophical viewpoints. This nominee, for example, is far less suited for a federal judicial position, and far more dangerous to the fair administration of justice, than was Charles Pickering of Mississippi, who was recently rejected for a federal judgeship.

I would urge you to work against this ill-advised nomination.

Best personal regards,



Charles W. Daniels

cc: Senator Patrick Leahy

**L. CLARK DONALDSON**

ATTORNEY AT LAW

356 EAST 900 SOUTH  
SALT LAKE CITY, UTAH 84111  
PHONE (801) 220-0700  
FAX (801) 579-0606

July 10, 2001

Honorable Patrick J. Leahy  
Chairman Senate Judiciary Committee  
United States Senate  
Washington, D.C. 20510

Re: Appointment of Paul G. Cassell

Dear Chairman Leahy:

I write to urge you to vote against and do all within your power to defeat the confirmation of Paul G. Cassell as a United States District Court Judge for the District of Utah. As a practicing member of the Utah State Bar for more than fifteen years, I have appeared before all of the federal district court judges in Utah. In addition, I am a fourth generation Utahn and have spent virtually all of my life in this state. I am well aware of Utah values and the historic factors that led to the formation of this state. Even given the varied group of individuals that have sat as judges here and the fact an individual can change after taking the bench, I must encourage you to block Mr. Cassell's confirmation.

Let me briefly outline my reasons. Professor Cassell represents the most extreme right wing philosophies of any legal academic I have encountered. The positions he took in the *Dickerson* case are generally regarded as laughable by mainstream practitioners in the criminal arena--both prosecutors and criminal defense attorneys. His well-established connections with the Washington Legal Foundation demonstrate that this man has a definite agenda which would follow him to the bench. He starts from the premise that constitutional protections of the accused are simply technicalities which need to be circumvented. One of the major premises in his attack on *Miranda* protections is that anyone who invokes them is guilty. If you have any experience in police interrogation techniques, then you will be aware that often people are confused, caught off guard or just feel downright intimidated by the inherently coercive environs of the patrol car or police station. He also subscribes to the view that it is bad for society to have a suspect aware of his or her rights. A view that would traditionally work to the detriment of the poorly educated or economically deprived. In short, he fails to recognize the consequences of nullifying a constitutional doctrine that in some small measure equalizes the playing field between the haves and the have-nots.

More disturbing than his extremist views, Professor Cassell has shown a repeated tendency to eschew the truth when it did not suit his preconceived views of what the law should be. For

example, his claim that the *Miranda* decision has led to reduced clearance rates of serious crime is unsupported. See Stephen J. Schulhofer, *Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 Nw. U.L. Rev. 500; Stephen J. Schulhofer, *Miranda and Clearance Rates*, 91 Nw. U.L. Rev. 278 (1996); George C. Thomas, III, *Telling Half Truths*, Legal Times, Aug. 12, 1996 at 20 and 24; Stephen J. Schulhofer, *Bashing Miranda is Unjustified—And Harmful*, 20 Harv. J.L. Pub. Pol'y 347 (1997); and Hugo Adam Bedau & Michael L. Radelet, *the Myth of Infallibility: A Reply to Markman and Cassell*, 41 Stan. L. Rev. 161 (1998). The most troubling aspect of this man's legal scholarship is that it elevates partisan considerations over careful and deliberate analysis of data. The skill of objective and thoughtful review of facts is one that is critical to the day to day workings of a trial judge. Professor Cassell's writings raise a troubling specter of the inability to perform this most vital function. Similarly, I have watched him testify before various committees of the Utah State Legislature regarding one or the other of his initiatives to modify the state constitution. The most disturbing aspect of his behavior is a number of distorted factual representations. For example, he once testified that if the exclusionary rule recognized by the Utah Supreme Court under the state constitution were abrogated that criminal appeals would be reduced by seventy five percent. Fortunately, this misrepresentation was dispelled by the testimony of subsequent witnesses. His strong bias raises serious questions about his ability to fulfill the role of an impartial decision maker.

Finally, I oppose Mr. Cassell's confirmation on the grounds he lacks substantial ties to the State of Utah and has not engaged in the practice of law in a substantial way. Professor Cassell has no significant experience practicing law. Virtually his entire career has been spent as an academic or chasing big headline cases for the Washington Legal Foundation. His actual courtroom experience is very limited. He served as a Special Assistant U.S. Attorney in the Eastern District of Virginia for a short time and I understand he had little actual trial experience. Why does the senate now keep confirming federal district court judges for the District of Utah who are so inexperienced? There are many practicing lawyers and sitting state court judges in Utah who are well qualified to assume the considerable trust and weight that attends a lifetime appointment to the federal bench. Please look to one of them. Stop the process of confirming federal district court judges who do little more than meet an ideological litmus test.

Thank you for considering my comments. If you or one of your staff has any questions about what I have written, please feel free to contact me.

Sincerely,  
  
 L. Clark Donaldson

---

Kent Eldridge, P.C., A Professional Corporation

Kent Eldridge Attorney at Law

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March 18, 2002

Senator Don Nickels  
133 Hart Senate Office Building  
Washington, D.C. 20510-3602

Senator James Inhofe  
353 Russell Senate Office Building  
Washington, D.C. 20510-3603

Gentlemen:

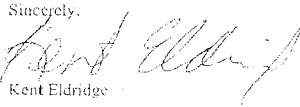
As a practicing lawyer with 25 years experience, I strongly recommend you vote against the nomination of Paul Cassel, U.S. District Court for the District of Utah.

Professor Cassel appears to favor order over law. His opinions regarding Miranda is a thinly disguised attack on the well-settled law by the Supreme Court of the Fifth Amendment.

Professor Cassel statement, "...the death penalty system in America is the most accurate criminal sanction in the world." More than 100 death-row exonerations prove nothing to be further from the truth.

In the interest of justice, please reject the nomination of Paul Cassel.

Sincerely,

  
Kent Eldridge

KEL:th

cc: Senator Patrick Leahy (Via facsimile 202-228-0861)

September 7, 2001

Stephen M. Enderton  
2991 Kenwood Street  
Salt Lake City, Utah 84106

Senator Patrick Leahy  
Chairman of the Senate Judiciary Committee  
433 Russell Senate Office Building  
Washington DC 20510

RE: Nomination of Paul Cassell

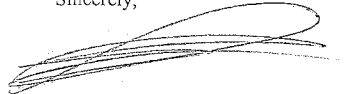
Dear Honorable Patrick Leahy:

I am writhing in regard to the recent nomination of Paul Cassell to the federal bench in the District of Utah. There has been quite a bit of publicity relating to a letter that you received from, Ron Yengich, one of our prominent criminal defense attorneys in Utah. Many people are saying that his comments should carry little weight. The comments generally go that he only wrote what was expected because he is a liberal democrat and a criminal defense attorney. I am neither liberal or a democrat. As a matter of fact, I am a very staunch republican with very conservative views. The only similarity between myself and Mr. Yengich is that we are both attorneys. I do not, however, practice in the area of criminal law. My field of practice is limited to bankruptcy law. While I disagree with Mr. Yengich on a number of issues, the fact that Mr. Cassell must not be confirmed to be a United States District Court Judge is one in which we agree. I believe Mr. Cassell is neither qualified nor independent enough to adequately serve the federal bench or the people of Utah.

Mr. Cassell has consistently pushed ultra conservative positions. On the occasion where the courts disagree, he is quick to point out that the judge making such rulings are wrong. His criticism is often directed towards the United States Supreme Court Justices such as when they did not adopt his position relating to the miranda warnings. I believe that it would be virtually impossible for any person appearing before him to be afforded a fair and impartial trier of fact. I believe that Mr. Cassell would use his position to push his personal ultra conservative agenda to the detriment of all of those who appear before his court.

I believe that a critical review of Mr. Cassell should be enough to convince you that Mr. Cassell should not be recommended for confirmation.

Sincerely,



Stephen M. Enderton

671

nt By: Ferguson & Hix;

830249 2999;

Mar-18-02 4:30PM;

Page 2/2

WALLACE T. FERGUSON  
ANDREW J. HIX

Ferguson & Hix  
ATTORNEYS AT LAW  
P.O. BOX 1106  
BOERNE, TEXAS 78008  
TELEPHONE (830) 248-9596

TELECOPIER  
(830) 248-2998

March 18, 2002

**BY TELECOPY ONLY - (202) 224-0776**

Honorable Kay Bailey Hutchison  
United States Senator

**RE: Senate Judiciary Committee; Nomination of Paul Cassell**

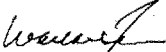
Dear Senator:

I urge you to take action to prevent Paul Cassell from being nominated to a seat on the U.S. District Court for the District of Utah.

You and I were classmates at the University of Texas Law School. Mr. Cassell's position on *Miranda*, the exclusionary rule, and other issues surrounding the administration of criminal justice stand in opposition to everything we were taught.

Thank you for considering my position on this very important matter.

Respectfully,

  
Wallace T. Ferguson  
Attorney at Law

WTF:jes

cc: Honorable Patrick Leahy  
United States Senator  
By telecopy only - (202) 228-0861

MAR-18-2002 15:57

FRIEDMAN AND GILBERT

216 621 0427 P.01


**FRIEDMAN & GILBERT**

ATTORNEYS AT LAW

 GORDON S. FRIEDMAN  
 TERRY H. GILBERT  
 BRADLEY L. GREENE

March 18, 2002

SENT BY FAX: (202) 228-0861

 Senator Patrick Leahy  
 433 Russell Senate Office Building  
 Washington, D.C. 20510

Re: Paul Cassell

Dear Senator Leahy:

As a practicing criminal defense attorney in Ohio, I would like to add my voice to the many lawyers who are alarmed at the nomination of Paul Cassell for a District Court Judgeship in Utah. His staunch bias against deeply held interpretations of the rights of the accused, in particular his opposition to the Miranda ruling, are extreme and far outside the mainstream of legal thought in this country.

Given the great talent of many qualified individuals who would serve well, the appointment of such an ideological candidate for a lifetime position as Federal Judge would be an ominous step backward.

Thank you for your consideration.

Very truly yours,

Terry H. Gilbert

THG/mm

1370 ONTARIO STREET, SUITE 1700, CLEVELAND, OH 44113-1726 TEL: 216.241.1430 FAX: 216.621.0427

TTTTT P.01



673

5631 Girard Ave. S.  
Minneapolis, MN 55419  
March 18, 2002

Hon. Patrick Leahy  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

By Facsimile (202) 228-0861

Re: Nomination of Paul Cassell

Dear Senator Leahy,

I'm writing a letter like this to my senators, but I'm writing to you as Chair of the Judiciary Committee. I understand that the President's nomination of Paul Cassell to the federal court in Utah is being heard tomorrow, March 19<sup>th</sup>.

I hope you will vote against reporting this nomination out of committee. This nominee is a far-right extremist who will never be able to fairly apply the protections of the Bill of Rights in criminal cases, or other provisions of the Constitution to matters coming before him.

Professor Cassell single-handedly injected himself into the litigation which culminated in the United States Supreme Court's decision in Dickerson v. United States, 530 U.S. 428 (2000). His argument that the protections established in 1966 in Miranda v. Arizona was so extreme that the United States Department of Justice refused to defend the Fourth Circuit's decision before the Supreme Court. Ultimately, the opinion re-affirming Miranda was written by Chief Justice Rehnquist, no friend of either Miranda or the criminal defendant, for seven members of the Court.

Professor Cassell also believes that the federal courts should not be re-examining the fairness of state-court capital sentencing proceedings, and he has argued against using the exclusionary rule for violations of the Fourth Amendment.

Mr. Cassell's track record shows how he would discharge his duties. He should not be confirmed.

Sincerely,



Peter W. Gorman

June 20, 2001

Senator Patrick Leahy  
Chairman of the Senate Judiciary Committee  
United States Senate Office Building  
Washington, D.C.

Dear Senator Leahy:

I find myself in the very odd position of having to contact you, even though I am a citizen of the state of Utah and I am technically a constituent of Senator Orrin Hatch of Utah, the ranking minority member of your committee. I am contacting you because it recently came to light, that President George W. Bush has nominated Professor Paul Cassell of the University of Utah Law School to be United States District Judge for the District of Utah. I understand politics well enough to know that President Bush would not have made this nomination, unless Hatch had suggested Cassell for the appointment.

In my opinion, it would be a profound mistake for your committee to confirm Paul Cassell for a position in which he is obligated to serve all of the people and dispense equal justice and in which he would serve for life. Professor Cassell is nothing short of a conservative ideologue. This is the real reason why President Bush, with Senator Hatch's encouragement, nominated Cassell for this position. Professor Cassell's greatest claim to notoriety is that he took a case a couple of years ago for the express purpose of getting the United States Supreme Court to overturn the precedent of *Miranda v. Arizona*. Professor Cassell finds the whole idea that police ought to have to warn persons charged with crimes of their legal rights under the Constitution to be odious and offensive. This case was heard by the United States Supreme Court and in a 7-2 opinion (authored by Chief Justice Rehnquist) the Court refused to overturn *Miranda*. When this result was announced, Professor Cassell angrily denounced the decision, implying that Rehnquist—one of the most conservative members of the court—was a hopeless liberal. All Rehnquist did in the opinion was the obvious. He acknowledged that *Miranda* had been the law of the United States for 34 years and was now part of our culture. He made short work of another argument that Cassell raised that Congress could pass laws which, in effect, could curtail or overrule portions of supreme court decisions.

This brings me to my second major criticism of Cassell. I believe he lacks the proper respect for the idea of judicial review. Cassell's arguments in the case I have mentioned above clearly suggested that he thought legislative bodies should be able to pass laws overruling constitutionally based supreme court decisions. Such arguments are damaging to the Constitution. It has been established Constitutional law since 1803 (*Marbury v. Madison*) that the Supreme Court has the right to strike down unconstitutional enactments of Congress. In our country, the courts have the last word on the Constitution—not legislative bodies. Someone who does not believe this should not be a federal judge.

Third, I generally question the wisdom of appointing a law professor to sit as a trial court judge. There are many fine law professors in America. However, generally speaking such a position in the profession lends itself better to an appointment to a United States Court of Appeals or the United States Supreme Court, rather than to a trial court. Professors tend to deal with books and arguments which are abstract in nature. The essence of sitting as a trial judge requires that one not only have a good grasp of legal principles, but of people and the impulses that move them. In 1948, a law professor named Willis Ritter was appointed to sit on the United States District Court for Utah. His appointment proved to be a disaster. He received more complaints than probably any sitting district court judge in history. At the time of his death in 1978, several moves were underfoot to have him impeached and removed from office due to malfeasance. Sadly, history has a way of repeating itself.

The tragedy of all of this, is that there are many fine candidates for the federal district court here in Utah. Most of these candidates could not be described as conservative or liberal. Rather, they are simply solid lawyers and state court judges who have good records as trial counsel. We have dozens of state district court judges who would make excellent appointees to the federal district court. If only one of these men or women could get this chance than we would have a real quality candidate appointed federal judge. I am hoping that you and your democratic colleagues can muster enough opposition to the nomination of Paul Cassell to spare the people of Utah the indignity of his appointment. Thank you for taking the time to read this.

Sincerely yours,

Mark H. Gould  
Attorney at Law  
290 25th Street, Suite 204  
Ogden, Utah 84401 Telephone: (801) 392-5555  
email:  
markg91359@aol.com



STATEMENT OF SENATOR MARY LANDRIEU  
ON THE NOMINATION OF LANCE AFRICK  
TO U.S. DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA

Mr. Chairman, members of the committee. I am honored to join my friend and colleague, Senator Breaux in endorsing Lance Africk for Federal District Judge for the Eastern District of Louisiana. Again, I must commend President Bush for this nomination. He has chosen an exceptional man with a fantastic reputation for the Federal Bench.

I cannot say enough about Lance. As the Committee knows, Lance brings over 25 years of legal experience to this job, and for the past 12 years, he has served as the U.S. Magistrate for Civil and Criminal Matters. He has served his local community and country with pride as a Orleans Parish District Attorney, a United States Attorney and most recently as a Federal Magistrate, and I know that he looks forward to continuing his service. Throughout his distinguished career, Lance has brought honor and professionalism to the bar.

Numerous letters of support have poured into my office praising Lance's qualities. Fair, Courteous, Decisive, and Intelligent are the words most often used to describe Lance. I am sure that the members of the Committee agree with me when I say that these are the qualities that should be possessed by any Federal Judge.

I would like to take a moment to acknowledge Lance's wonderful family. His wife Diane and his four children mean the world to him and inspire his service.

Mr. Chairman, we need more people like Lance on the Federal Bench. He is a true patriot who desires to serve his country to the best of his ability. He recognizes the importance of our Judicial system and has dedicated his life to the system of laws that makes our country so unique. It is for these reasons that I wholeheartedly endorse his nomination and urge all of my colleagues to confirm him.

Thank you very much.

BOBBY D. MIMS, P.C.

Attorney at Law -  
P.O. Box 1107  
Tyler, Texas 75710  
(903) 595-2100 (903) 596-0719 fax  
law@bdt-mims.com - http://www.ut-bdms.com

March 1, 2002

VIA FAX: (202) 224-9516

United States Senate  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: Paul Cassell Nomination

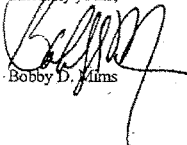
Dear Members of the Committee:

I am writing regarding the nomination of **Mr. Paul Cassell** as a Federal Judge for the U.S. District Court for the Utah District.

I am asking that the committee fully consider Mr. Cassell's writings and teaching regarding the value of 4<sup>th</sup> and 5<sup>th</sup> Amendment protections for citizens accused of crimes. Mr. Cassell has publicly attacked the Miranda warnings and would narrow 5<sup>th</sup> Amendment protections. Approval of this nomination by the committee and his confirmation as a Federal Judge for lifetime tenure would be inconsistent with almost the unanimous agreement among Defense attorneys, most Law Enforcement Organizations and many prosecutors. Mr. Cassell's public position on these very important safeguards conflicts with settled case law and recent court decisions.

I believe that if the committee fully considers Mr. Cassell's record and his writings then members will vote to decline to recommend this nomination. I also request that this **nomination be disapproved**.

Sincerely yours,

  
Bobby D. Mims

BDM/mc

Bobby D. Mims  
Attorney at Law

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SHERLOCK AND NARDI

FAX NO. 14067526511

P. 01

LAW OFFICES OF

**Sherlock  
&  
Nardi**EXECUTIVE PLAZA  
30 FIFTH STREET EAST  
KALISPELL, MT 59901-4999  
(406) 752-6500  
FAX: 752-6511PATRICK D. SHERLOCK  
STEPHEN J. NARDI

Senator Patrick Leahy  
Chairman Senate Jud. Comm.  
U.S. Senate  
Washington D.C.

Dear Chairman Leahy,

I am writing you to urge you  
to oppose President Bush's nomination  
of Paul Cassell to the Federal Bench in  
Utah. Our Constitution cannot withstand  
the continued assault upon it by  
jurists like Paul Cassell.

Please oppose this nomination with  
vigor and all others that are similarly  
not qualified.

Thank You.

Steve Nardi



## NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

March 18, 2002

Dear Chairman Leahy and Members of the Committee:

On behalf of the nation's largest bar association for lawyers representing the rights of persons and businesses accused, I write to express our concerns regarding the nomination of Paul Cassell for the U.S. District Court for the District of Utah. The National Association of Criminal Defense Lawyers is a non-partisan organization committed to preserving fairness within America's criminal justice system. We generally do not take positions on judicial nominees, particularly those for the U.S. district courts. An exception is required in this instance because of Professor Cassell's extreme views regarding the rights of the accused in the criminal justice system and unusually activist advocacy in support of those views.

The Utah Association of Criminal Defense Lawyers, NACDL's affiliate in that state, has opposed Professor Cassell's nomination, explaining, "Not only does Cassell lack the proper temperament a judge must possess, we question his ability to provide a fair hearing — free from bias — for those who must appear before him in court on a criminal matter." Susanne Gustin, *Don't Confirm Cassell*, The Salt Lake Tribune, Jan. 4, 2002.

Of greatest concern are Professor Cassell's views and efforts in three areas: (1) his aggressive activism in seeking to eviscerate the Fourth Amendment and *Miranda* exclusionary rules; (2) his immoderate approach to the complicated issue of victims' rights; and (3) his unrealistically placed confidence in our nation's patently inadequate capital punishment systems. In pursuing this one-sided criminal justice agenda, Professor Cassell has drawn criticism from his peers for intellectual dishonesty and statistical manipulation. See, e.g., Richard A. Leo & Richard J. Ofshe, *Using the Innocent to Scapegoat Miranda: Another Reply to Paul Cassell*, 88 *Journal of Criminal Law and Criminology* 557 (1998). Because such criticism calls into question his fitness for the federal bench, we urge the Committee to fully explore the well-documented flaws in Professor Cassell's academic writings.

Professor Cassell's legal activism distinguishes him from most judicial nominees. For example, without question, victims of crime should be treated with dignity and respect throughout the criminal justice process, and we do not fault Professor Cassell for his heart-felt views on this topic. The consistently one-sided nature of his views, and the partisan fervor that has characterized his legal career, however, raise questions about his ability to judge objectively in criminal cases.

"LIBERTY'S LAST CHAMPION",

**PRESIDENT**  
Irwin H. Schwartz  
Seattle, WA  
**President Elect**  
Lawrence S. Goldman  
New York, NY  
**First Vice President**  
E. E. "Bo" Edwards  
Knoxville, TN  
**Second Vice President**  
Barry C. Scheck  
New York, NY  
**TEXAS**  
Barbara E. Bergman  
Albuquerque, NM  
**SECRETARY**  
Martin Pinales  
Cincinnati, OH  
**PARLIAMENTARIAN**  
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Albany, GA  
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St. Louis, MO  
Richard K. Gilbert  
Washington, DC  
Stephen R. Glanzert  
Knoxville, TN  
Leslie Haglin  
Seattle, WA  
John Wesley Hall, Jr.  
Elk River, MN  
Carman D. Hernandez  
Washington, DC  
Allan Hirsch  
Miami, FL  
Richard Karmen  
Indianapolis, IN  
Kathryn M. Kase  
Albany, NY  
Jim E. Levine  
Houston, TX  
Frederick D. Liebman, Jr.  
Seattle, WA  
Helen Lerner  
Knoxville, TN  
Jack T. Litman  
New York, NY  
J. Charney Mason  
Orlando, FL  
Randi McGinn  
Albuquerque, NM  
Daniel E. Moran  
Wichita, KS  
E. C. "Garry" Morris  
Austin, TX  
Cynthia Hufar Orr  
San Antonio, TX  
Hugo A. Rodriguez  
Miami, FL  
Karl A. Schaffer  
Houston, TX  
Nathan Schaye  
Tucson, AZ  
Elizabeth Semel  
Berkeley, CA  
Alan Silber  
Newark, NJ  
Lawrence A. Vogelstein  
Exeter, NH  
Lisa M. Wayne  
Denver, CO  
Ellen Zucker  
Boston, MA  
John K. Zwilling  
Alexandria, VA  
**Executive Director**  
Ralph Grunewald

1025 Connecticut Avenue, NW • Suite 901 • Washington, DC 20036  
(202) 872-8600 Fax (202) 872-8690 [assist@nacdl.org](mailto:assist@nacdl.org) [www.nacdl.org](http://www.nacdl.org)

National Association of Criminal Defense Lawyers  
 March 18, 2002  
 page 2

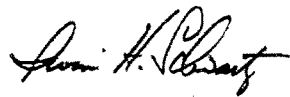
In particular, we are concerned that Professor Cassell would continue his effort to chip away at bedrock United States Supreme Court rulings that ensure law enforcement compliance with the Constitution. We have worked with a diverse array of groups — from the U.S. Chamber of Commerce and the American Corporate Counsel Association to the National Rifle Association and the American Civil Liberties Union — to protect America's rights from such short-sighted attacks. As an outspoken critic of the Fourth Amendment and *Miranda* exclusionary rules, Professor Cassell has repeatedly denounced protections the Supreme Court has held are constitutionally rooted. We think his views in this area warrant particularly close questioning and, at minimum, clear assurances from the Professor that he will follow established Supreme Court precedent on these fundamental questions, and not seek to "push the envelope" on these issues from a position on the bench, in the same activist manner that has typified his public work to date.

We also share the concerns of our Utah colleagues that Paul Cassell may lack the ability to perform judicial duties impartially in light of his strongly-held views. As Justice Anthony Kennedy stated, "The essential rule of judicial relations concerning lawyers and litigants is this: a judge must be fair and impartial. All sides to the controversy must be given a full and fair hearing." Anthony M. Kennedy, *Judicial Ethics and the Rule of Law*, 40 St. Louis U. L.J. 1067, 1069 (1996). In no court is this canon more important than in federal district court where our citizens sit in judgement of their fellows, and the fairness and demeanor of the judge, or lack thereof, can tip the scales of justice in juror deliberations.

Indeed, the district court has been called the cornerstone upon which the whole federal system of justice is laid, and it is entrusted to persons who are accountable to the public just once — prior to confirmation. In deciding whether to consent to this nomination, we hope the Committee will explore thoroughly his academic integrity and his controversial views, and consider whether his widely expressed opinions will promote or retard a sense of fairness and justice among those who would come before him if he were to be confirmed. We also respectfully request that the Committee seek clear assurances from Professor Cassell that he will adhere to established law, and not use his position on the bench to pioneer his activist views on criminal justice issues.

We thank the Chairman and the Members of the Committee for their efforts in reviewing this nomination.

Sincerely,



Irwin Schwartz  
 President

MAR-18-02 MON 19:17

513 922 3994

P.01



National Organization of  
**Parents of Murdered Children, Inc.**

*For the families and friends of those who have died by violence.*

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100 East Eighth Street • Suite B-41 • Cincinnati, Ohio 45202  
(513) 721-5683 • FAX (513) 345-4489

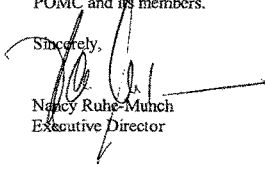
March 18, 2002

Senator Orrin Hatch:  
C/O Alex Dahl  
202-228-1698

Dear Senator Hatch:

On behalf of the National Organization of Parents Of Murdered Children, Inc., and its over 100,000 members, I am writing to strongly support Paul Cassell's confirmation for the Federal District Court for the District of Utah. Paul has been a tremendous asset to POMC and its members.

Sincerely,



Nancy Ruhe-Munch  
Executive Director



# National VCAN

## National Victims' Constitutional Amendment Network

789 Sherman Street, Suite 470 • Denver • CO • 303 832 -1522 • 1 800-529 - 8226 • E-Mail NVCAN@AOL.COM

### Executive Committee:

Roberta Roper, Co-Chair  
Robert Preston, Co-Chair  
Mary McGhee, Secretary  
Steve Siegel, Treasurer  
John Stein  
Paul Cassell  
Steve Twist  
Jay Howell

March 13, 2002

Honorable Dianne Feinstein  
Senator for California  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:


On behalf of the National Victims' Constitutional Amendment Network (NVCAN), I wish to express our strong support for Paul Cassell, Esquire, who has been nominated to serve as a federal judge. Those of us who have been privileged to know and work with Mr. Cassell have deep respect and admiration for his leadership and service to the criminal justice system and the society it serves.

Paul Cassell has a distinguished record of outstanding service to others. He is currently a Professor of Law at the University of Utah College of Law, where he teaches criminal procedure. He has written and lectured extensively regarding crime victims' rights, serving on the Utah Council on Victims, where he was instrumental in obtaining the passage of the Utah State Victims' Rights Amendment. He worked with total commitment and dedication on behalf of 89 victims of the Oklahoma City bombing in their efforts to obtain their lawful rights to watch proceedings in that case.

His career includes a wealth of experiences that reflect his exceptional ability to strive for balance and fairness in the criminal justice system so that true justice is achieved. Clearly, those qualities have been demonstrated in abundance as NVCAN has worked for the passage of the U.S. Constitutional amendment for crime victims' rights.

Paul Cassell is a man of honor and integrity who will bring a keen intellect, ethical conduct and distinction to the federal bench. We in NVCAN have witnessed him as one of our most active contributors and a passionate advocate for equal justice under the law. We hope you will carefully consider our strong support for his confirmation.

Sincerely,

  
Roberta Roper and Robert Preston  
Co-Chairpersons

The Honorable Orrin Hatch  
 Ranking Member, Committee on the Judiciary  
 152 Dirksen Senate Office Building  
 Washington, DC 20510-4402

Dear Sir,

I am writing this letter to you today to express my deep support for the nomination of Paul Cassell to a position as a Federal Judge.

I have had the pleasure of working with Mr. Cassell over a long period of time on a very important case involving my family and our rights as victims. During that time I had many conversations with Paul and I felt that I came to know him reasonably well as both a person and an attorney.

As an attorney, Paul's accomplishments are many, and I am sure that you have already been made aware of the many great experiences and achievements of his distinguished career. I wish to speak more intimately of my personal experience with Mr. Cassell's handling of our own case.

Our case was probably the most difficult and emotionally draining experience of our lives. My family was forced to deal with a tragedy that we never imagined would happen to us. We were confronted with many obstacles that we never anticipated and we grew increasingly frustrated with the confusion, and seeming contradictions of the Justice System as we were lied to, and misled, by many different people throughout the process, including people that we thought were supposed to be on our side.

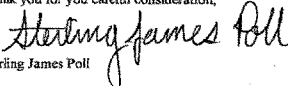
During the height of our frustration with the handling of our case we began to search for someone to provide us with legal help and representation and we were fortunate enough to find Mr. Cassell. Paul agreed to help us without ever charging us a penny as he tirelessly worked to resolve our case in a favorable and just way. He was always honest and upfront with us about our case, even when the answer was not what we wanted to hear. Paul had a gift for being able to wade through all the legal confusion and explain things clearly and understandably to us. Paul impressed me as a person who is able to see things fairly from all different perspectives and help opposing sides find the right solution to a problem. Our case did not end with exactly the decision that we hoped for, but thanks to Paul Cassell we were able to find some measure of justice and closure, and we feel much better about the outcome of our case. It is my firm belief that you would be very hard pressed to find any better attorney than Mr. Cassell!

As a person, Paul is a very honest, fair-minded, and compassionate man. In today's world it has become increasingly hard to find people whose judgement you can completely trust and rely upon, but Paul Cassell is just such a person. At a time when more and more people are becoming jaded about the law and losing confidence in our Justice System, Paul Cassell is the right type of person to help bring integrity back into the legal profession and restore the faith of the American people in their courts, both victims and defendants.

I hope I never again find myself or my family in the position of having to deal with our legal system in such a personal way. But if I do, I hope that the Judge who hears our case and the attorney's on both sides of the issue are people like Paul Cassell, because if they are then I know we'll be in the best possible hands.

I sincerely hope that you will support Paul Cassell's nomination as a Federal Judge. Please don't reject him over something so trivial as political party affiliation or ideology. Accept him because he's a very good person who truly has Americans best interests at heart. Now, more than ever, America desperately needs great leaders, like Paul Cassell, and I know that you will not find a better candidate for the job!!!

Thank you for your careful consideration,

  
 Sterling James Poll

KRISTINE M. ROGERS

ATTORNEY AT LAW

712 JUDGE BUILDING  
8 EAST BROADWAY (300 SOUTH)  
SALT LAKE CITY, UTAH 84111  
Telephone (801) 994-6000  
Facsimile (801) 994-6094  
email address: kmerrellrogers@qwest.net

June 4, 2001

Patrick Leahy, United States Senator  
433 Russell Senate Office Building  
Washington, DC 20510

**Re: Nomination of Paul Cassell**

Dear Senator Leahy,

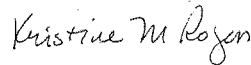
I have heard that Paul Cassell is being considered for appointment to the Federal Bench in the United States District Court located in Salt Lake City, Utah. I wish to voice my concerns regarding his appointment. I have personal knowledge of Mr. Cassell's practices and attitudes and believe that his temperament is not suited to the bench.

Mr. Cassell has, on numerous occasions, relayed stories about himself which cause me to conclude that he views our justice system as a mechanism with which he can manipulate our government with an agenda for ever increasing governmental power and ever decreasing individual rights.

I find Mr. Cassell's agenda offensive and urge you to fully investigate this individual and scrutinize his motives in seeking the awesome, unfettered powers which are vested in a federal judge.

Thank you for consideration of my concerns.

Sincerely,



Kristine M. Rogers

KMR/al

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERALMARK L. SHURTLEFF  
ATTORNEY GENERALRAYMOND A. HINTZE  
Chief Deputy

September 27, 2001

KIRK TOEGENSEN  
Chief Deputy

The Honorable Orrin Hatch  
United States Senate  
135 Senate Russell Building  
Washington, D.C. 20510

Re: Judicial nominee Professor Paul G. Cassell

Dear Senator Hatch:

I am writing to you in your capacity as ranking member of the Senate Judiciary Committee to express my strong support for the nomination of Professor Paul G. Cassell to the United States District Court for the District of Utah. He is an active practitioner, prolific scholar, and fervent advocate for victims' rights.

Professor Cassell is not "anti-defendant" as some have charged, but pro-victim. As a national leader of the victims' rights movement, Professor Cassell was instrumental in achieving reforms in Utah law that have given voice to victims of crime. Professor Cassell has exposed shoddy scholarship attacking capital punishment and advocated for moderating *Miranda's* sweeping exclusionary rule. However well supported and reasonable, these positions have understandably not won him points in the defense community. But in the larger community, Paul Cassell is highly regarded for his service in the public interest.

In addition, I personally know Paul Cassell to be a man of absolute integrity and fairness. He personifies the principal of "justice." He has the ability to put aside personal opinion and bias, and fairly and impartially adjudicate the issues brought before him.

In sum, Professor Cassell is well respected in Utah and would be a credit to the federal bench in this State. I urge you to support his nomination.

Very truly yours,

A handwritten signature of Mark L. Shurtleff in dark ink, written over the words "Very truly yours,".

Mark L. Shurtleff  
Attorney General

03/18/2002 18:56 FAX 202 514 5818

DOJ VAWO

002/002



## U.S. Department of Justice

Office of Justice Programs

*Violence Against Women Office*

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Washington, D.C. 20531

March 18, 2002

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510-4402

Dear Chairman Leahy:

I am writing to express my strong personal support for the appointment of Professor Paul Cassell to the Federal District Court of Utah. I believe, based on my past association with Professor Cassell, that he will make an excellent judge.

Professor Cassell and I have worked together for over five years as co-members of the Utah Council on Victims of Crime and I have come to respect his integrity, great knowledge of the law, and ability to assist others in the comprehension of the often complex issues at hand. Often in my work as State Coordinator for the Utah Governor's Cabinet Council on Domestic Violence, Professor Cassell was of invaluable assistance in analyzing legislation as it was being proposed and many times provided an expert opinion on existing federal and state statutes. Issues of confidentiality, victim notification and courtroom video taping became more understandable as he worked to provide a solid, legal foundation for others to follow.

It is my belief that Professor Cassell is exactly the right kind of balanced individual that will make him an exceptional Federal District Court Judge.

Respectfully,

Diane M. Stuart, Director

cc: The Honorable Orrin G. Hatch  
Assistant Attorney General Viet D. Dinh

03/18/02 MON 20:25 FAX  
03/18/2002 18:10 FAX 001 001 0007

LUNA, Erik

002/003

THE STATE UNIVERSITY OF NEW JERSEY

**RUTGERS**

UNIVERSITY SCHOOL OF LAW

123 WASHINGTON STREET, NEWARK, NEW JERSEY 07102-5192

GEORGE C. THOMAS III  
*Professor of Law*  
*Judge Alexander P. Waugh, Sr. Distinguished Scholar*

TEL: (973) 353-5035  
FAX: (973) 353-1445  
e-mail: gthomas@kirby.rutgers.edu

March 16, 2002

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510-4402

The Honorable Orrin Hatch  
Ranking Member, Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, DC 20510-4402

Dear Senators Leahy and Hatch:

I write to support enthusiastically and without reservation the nomination of Professor Paul G. Cassell to be a federal district judge. I have known Paul for many years, and I believe he will make a highly capable judge. I wrote a letter supporting his tenure at the University of Utah College of Law several years ago, and he has continued to shine as a legal thinker and writer.

Professor Cassell is intelligent, thoughtful, and willing to explore different approaches to problems that arise in the law. He writes extremely well and is top flight in his analysis of cases and doctrines. Indeed, he has on occasion pointed out an analytical flaw in a doctrinal argument I was making, thus allowing me to reshape the argument before publishing it. Professor Cassell has continued the tradition of Justice John Harlan and Professor Joseph Grano by holding the premises of *Miranda v. Arizona* up to the light and asking why the Constitution should consider police interrogation such a threat to autonomy and free will.

We have "duelled" in a friendly way in print (Volume 43 of the UCLA Law Review, pages 821-959), before a TV camera (in the PBS Debates-Debates series), before the Senate Subcommittee on Criminal Justice Oversight, and at the University of Michigan symposium on *Miranda* and *Dickerson* (November, 2000).

02/18/02 MON 20:28 FAX  
03/19/2002 14:13 FAX 801 581 6887

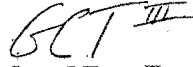
Luna, Erik

0004  
003/003

Professor Cassell and I disagree on some issues and yet respect each other. This fact alone says volumes, I think, about how effective he will be as a judge in dealing with lawyers and others in his courtroom. I predict that Paul Cassell will research the law energetically, understand it as well as anyone can, and apply it fairly and consistently.

Should you wish further details, please let me know.

Sincerely yours,



George C. Thomas III  
Professor of Law

Judge Alexander P. Waugh, Sr. Distinguished Scholar

} PLEASE NOTE THAT THE  
ORIGINAL COPY IS ON  
ITS WAY TO YOUR  
OFFICES VIA U.S. MAIL.

c: The Hon. Viet D. Dinh  
Assistant Attorney General  
Office of Legal Policy  
U.S. Department of Justice  
950 Penn. Ave. N.W., Room 4640  
Washington, DC 20530

688

**LINDA S. THOMAS**  
ATTORNEY AT LAW

P.O. BOX 111426  
ANCHORAGE, AK 99511-1426

750 W. 2ND AVE., SUITE 207  
ANCHORAGE, AK 99501

Phone (907) 272-7871 Fax (907) 272-7971

March 18, 2002

Senator Patrick Leahy  
Chair, Senate Judiciary Committee

**RE: URGENT - March 19 hearing on Nomination of Paul Cassell**

Dear Senator Leahy:

Because his nomination will be considered at a hearing tomorrow, I am hurriedly writing to oppose the nomination of Paul Cassell for a seat on the U.S. District Court for the District of Utah. I submit the following in support of my opposition and trust that you will share it with the members of the Committee:

It is my understanding that Mr. Cassell has been quoted as saying that newly discovered evidence in criminal cases is "almost invariably unreliable." This is extremely disturbing. If confirmed, as a district court judge, Mr. Cassell would be ruling on habeas petitions from death row inmates and life sentences.

Mr. Cassell's position demonstrates an elitist and appalling view. It displays a lack of understanding and gross ignorance. How can he be oblivious to the many innocent persons freed when new evidence proves that they were wrongfully convicted! While DNA evidence helps to free the wrongfully convicted, there are many wrongs that occur during the judicial process that other kinds of new and reliable evidence can make right. The errors often occur because of failures by defense counsel, either because of their lack of skill and/or experience and/or lack of funding to provide a meaningful investigation and/or effective defense. Mr. Cassell's position is one that lacks a basic understanding of the dynamics of science, similar to that of defense attorneys and prosecutors where the system has failed the accused. Even though we have the best judicial system in the world, fair-minded jurists readily recognize the weaknesses of our judicial process and the possibility of errors, especially today, where many persons have been proven innocent subsequent to spending years in prison or worse, on death row.

Consider, for example, that the FBI's foremost hair comparison analyst, Special Agent Douglas Deedrick, has been recently proven wrong in two death penalty cases. Arising out of State v. Fain, 774 P.2d 252 (Idaho 1989), post conviction relief resulted in Mr. Fain being released last year after spending more than 18 years in jail and sentenced to death. In



Judiciary Committee  
 March 18, 2002  
 Page 2

McCormick v. State, 1999 WL 394935 (Tenn. Crim. App.), the defendant was granted a new trial on other grounds, but the hair evidence used to convict him has now been proven wrong. In each case, the defendant's trial counsel failed to have independent analyses of the hair evidence. Ultimately, independent comparative hair analysis, using the same microscopic technique employed by Special Agent Deedrick, proved his analysis to be wrong. The independent analyses were later bolstered by mitochondrial DNA (mtDNA) evidence. Upon information and belief, both defendants are now free. (Frighteningly, SA Deedrick has been an instructor in hair comparison analysis to law enforcement around the country.)

Mr. Cassell would have viewed both of the cited cases with his bias that newly discovered evidence is "almost invariably unreliable." One can only wonder on what basis he forms that opinion, but certainly one can conclude that he does not understand science or other weaknesses in our otherwise wonderful system of justice. One can reasonably infer that with his bias, he would try to keep the courthouse doors closed to similarly situated defendants in making determinations for funding for such cases and their investigations, and in making decisions on whether a *prima facie* case is made.

My understanding of his philosophy also includes that he gives short shrift to the protections that the Fourth and Fifth Amendments uniquely provide to the citizens of this country.

In protecting our citizens from unreasonable searches and seizures, the Fourth Amendment is one of the special provisions of our constitution that make this country the free and wonderful country that distinguishes it from most of the countries in the world. It is a freedom that our terrorist enemies do not know in their own countries.

It is also my understanding that Mr. Cassell has a history of attacking the Fifth Amendment protections and Miranda. His position was overwhelmingly rejected by a 7-2 U.S. Supreme Court decision in Dickerson v. U.S., 530 U.S. 428, 120 S.Ct. 2326 (2000) (Scalia, J. and Thomas, J., dissenting).

Our constitution deserves to be protected by the finest sentries. It does not appear that Mr. Cassell meets the test. I vehemently oppose his nomination.

I trust you will fully investigate these important concerns. Thank you for your consideration of my opinion.

Sincerely,



Linda S. Thomas

cc: Senator Stevens  
 Senator Murkowski  
 Congressman Young

FROM :

FAX NO.

Mar. 18 2002 11:23AM P2

Law Offices Of

**BONJOUR & THORMAN**A Professional Corporation  
24301 SOUTHLAND DRIVE, SUITE 312  
HAYWARD, CALIFORNIA 94545JULES FREDERICK BONJOUR, JR.  
MICHAEL P. THORMAN  
CAMELLIA BARAYTelephone  
(510) 785-4400  
Facsimile  
(510) 670-0955

March 18, 2002

Senator Diane Feinstein  
331 Hart Senate Office Bldg.  
Washington, D.C. 20510VIA FACSIMILE

Dear Senator Feinstein:

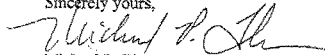
Tomorrow morning, the Senate Judiciary Committee will commence consideration of the nomination of Paul Cassell to the U.S. District Court in Utah. Mr. Cassell has proven himself to be a right-wing ideologue, particularly in the area of criminal justice. I believe that close scrutiny of his record and pointed questioning during the Committee's review process will show him to be unfit for the post to which he has been nominated.

Mr. Cassell made his national reputation in criminal justice circles through his eight-year campaign to overturn the Miranda decision, claiming that it was not constitutionally mandated. The U.S. Supreme Court resoundingly defeated this effort in Dickerson v. United States. Mr. Cassell was publicly critical of the opinion.

I am also concerned about his unflagging support of the death penalty, even in the face of recent evidence of death sentences passed on innocent people and racial bias in the selection of persons against whom the penalty is sought. He has publicly indicated that newly discovered evidence is "almost always unreliable," an attitude that is inappropriate to a position that considers habeas corpus claims of death-sentenced inmates.

Mr. Cassell is unquestionably an intelligence with an admirable legal pedigree. The same, of course, could be said of Robert Bork. Like Mr. Bork, I believe Mr. Cassell to be too extreme to be trusted to act as a District Court judge with fairness and intellectual integrity; I fear he will use the position to advance his own political agenda. I would appreciate your taking these thoughts into consideration when the Committee evaluates his appointment.

Sincerely yours,



Michael P. Thorman

Cc: Sen. Patrick Leahy

RICHARD J. TROBERMAN, P.S.  
ATTORNEY AT LAW  
SUITE 1200 PUGET SOUND PLAZA  
1325 FOURTH AVENUE  
SEATTLE, WASHINGTON 98101-2500

RICHARD J. TROBERMAN  
JOHN W. WOLFE  
OF COUNSEL

TELEPHONE  
(206) 343-1111

FACSIMILE  
(206) 340-1936

EMAIL  
rtrober@ps.com

March 18, 2002

The Honorable Maria Cantwell  
United States Senator  
717 Hart Senate Office Building  
Washington, DC 20510-4705

VIA FAX: (202) 228-0514

*Re: Opposition of Nomination of Paul Cassell to U.S. District Court*

Dear Senator Cantwell:

I write to urge you to vote against the nomination of Professor Paul Cassell to a life time appointment to the United States District Court for the District of Utah at the Senate Judiciary Committee nomination hearing scheduled on March 19, 2002.

Mr. Cassell, a law professor with no prior judicial experience, is perhaps best known for his attack on the *Miranda* exclusionary rule, an attack which the government and most law enforcement officials and groups refused to support. While teaching law at the University of Utah, Mr. Cassell published a highly questionable "study" on the alleged ill-effects of *Miranda* and filed numerous unsolicited amicus briefs seeking to have the decision overturned. His eight year campaign ended in failure in 2000, when the United States Supreme Court overwhelmingly rejected his argument in *Dickerson v. United States*. In typical fashion, Cassell denounced the Court's decision, saying "thousands of confessed dangerous criminals will go free" because of the *Miranda* rule.

Mr. Cassell has showed ambivalence towards the Fourth Amendment exclusionary rule as well, and has argued in favor of abolishing Utah's state exclusionary rule.

Mr. Cassell's inability to recognize even the most serious flaws in the death penalty system suggests that he lacks the objectivity to serve on the federal bench. In response to a study finding that courts reverse 2/3's of all capital cases, Cassell stated, "The study, to my mind, confirms the death penalty system in America is the most accurate criminal sanction in the world." As the more than 100 death row exonerations prove, nothing could be further from the truth. Cassell's unflinching support for the death penalty and his view that newly discovered evidence is "almost invariably unreliable" are particularly disturbing when one considers that, if confirmed, he would rule on habeas corpus petitions from death row inmates.

RICHARD J. TROBERMAN, P.S.  
ATTORNEY AT LAW

The Honorable Maria Cantwell  
March 18, 2002  
Page Two

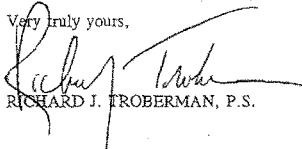
Aside from the extreme nature of his views, his overzealous advocacy in support of those views calls into question his ability to be fair and impartial in criminal matters. In both his anti-Miranda and pro-death penalty crusades, Cassell has drawn criticism from his peers for intellectual dishonesty and statistical manipulation. Several law review articles document Cassell's willingness to twist facts to support his anti-rights agenda.

Mr. Cassell has spent years waging war on the rules that exist to curb police misconduct and protect the rights of criminal defendants. Now he wants to make the rules. His anti-Fifth Amendment and pro-death penalty crusades, as well as his efforts to pass a dangerous victim's rights amendment to the United States Constitution, stem from a conviction that our judicial system is unduly deferential to the rights of the accused. If nominated, Mr. Cassell will undoubtedly take his distorted views to the bench, chipping away, wherever possible, at Supreme Court rules to ensure law enforcement compliance with the Constitution.

It is particularly important to block the nomination of Mr. Cassell at this juncture. Today's district court judge may well be tomorrow's nominee for the Circuit Court of Appeal or United States Supreme Court. Indeed, your Committee was recently faced in a confirmation hearing with the argument that Judge Pickering was qualified to be a Circuit Court judge because he had been unanimously confirmed by the Senate as a district court judge.

For all of these reasons, I urge you to vote against the nomination of Professor Cassell to the United States District Court for the District of Utah.

Very truly yours,



RICHARD J. TROBERMAN, P.S.

RJT:nm

cc: Senator Patrick Leahy (202-228-0861)

693



VIAD CORP  
1850 North Central Avenue  
Phoenix, AZ 85077  
602-207-4000

Steven J. Twist  
Assistant General Counsel  
602-207-2940

July 19, 2001

The Honorable Orrin Hatch  
Ranking Member, Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, DC 20510-4402

Dear Senator Hatch:

I am writing to express my strong support for the confirmation of Prof. Paul Cassell's nomination to the United States District Court for the District of Utah.

I have known Prof. Cassell through our work together in the cause of establishing and enforcing rights for crime victims. Paul is a person of compassion and fairness. He has deep respect for the rule of law and for the role of the judiciary in preserving and protecting it. He is at all times respectful of others and displays a temperament that will always remain faithful to the obligations of a federal judge. He has a strong work ethic and will clearly be able to meet the rigors of a busy trial court.

Paul is a person of intellectual and moral integrity; he will serve with distinction on the District Court when he is confirmed, giving equal justice to all who appear before him. I urge you and all of your colleagues to confirm the nomination of Prof. Paul Cassell.

Thank you for considering these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Twist", written over a horizontal line.

Steve Twist  
Assistant General Counsel  
Viad Corp

Chief Counsel  
National Victims Constitutional  
Amendment Network

cc: Hon. Viet Dinh  
Assistant Attorney General

Law Offices

FAX NO. : 434 220 4852

Mar. 18 2002 01:54PM P1

Bruce R. Williamson, Jr.  
ATTORNEY AT LAW  
913 East Jefferson Street  
Charlottesville, Virginia 22902  
brwj@ntelos.net

TEL (434) 293-8187  
FAX (434) 220-4852

March 18, 2002

Senator John Warner  
225 Russell Senate Office Building  
Washington, D.C. 20510-4601

Senator George Allen  
204 Russell Senate Office Building  
Washington, D.C. 20510-4604

RE: Nomination of Paul Cassell

Dear Senator Warner and Senator Allen:

I am writing to ask you to oppose the nomination of Paul Cassell to the United States District Court for the District of Utah. I believe that his views are well outside the mainstream and that he is likely to be an activist if confirmed. By "activist" I mean a judge whose decisions will be affected by his personal opinions and beliefs to such an extent as to cause him to not respect *stare decisis*, controlling precedent. Please examine his career and writings carefully with an eye to these concerns.

While I understand that neither of you is a member of the Senate Judiciary Committee, your voices may be influential to those Senators who are on that Committee. Moreover, should he be reported out of Judiciary, your votes against his confirmation would help to keep the judiciary the neutral and independent body it needs to be. I appreciate your consideration of these views.

Sincerely,



Bruce R. Williamson, Jr.

BRWJR/hos

cc: Senator Patrick Leahy, Chairman  
Senate Judiciary Committee

YENGICH, RICH & XAIZ  
ATTORNEYS AT LAW  
175 East 400 South, Suite 400  
Salt Lake City, Utah 84111

Telephone (801) 355-0320  
Fax (801) 364-6026

Ronald J. Yengich \*  
Bradley P. Rich  
Earl Xaiz  
Vanessa M. Ramos  
\*Also Member of Montana Bar

June 28, 2001

Patrick J. Leahy, United States Senator  
Chairman of the Senate Judiciary Committee  
224 Senate Dirksen  
Washington, D.C. 20510

Dear Senator Leahy:

I am writing about the nomination of Professor Paul Cassell to the Bench of the United States District Court, District of Utah. I write only for myself. However, a number of other interested lawyers in the State of Utah are extremely concerned about President Bush's proposed appointment of Mr. Cassell to the Federal Bench.

I am a lawyer who has practiced in the State of Utah almost 26 years. I have attached a copy of my vita to indicate that I have been involved as a criminal defense attorney for a number of years, and have held positions of trust both within the Criminal Defense Bar and the Utah State Bar Association. I'm a member of not only the Utah Bar but of the Montana Bar as well as the United States District Court for the District of Utah, the 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Circuit Court of Appeals, and the United States Supreme Court.

I have never written in opposition to a judicial appointment but I feel compelled to do so now. I have also served on a committee which have met to provide names to the President of United States in the past for an appointment of United States District Court Judges.

Paul Cassell neither has the judicial demeanor or academic ability in my judgment to be a United States District Court Judge. He is also not a native of Utah. This will be the second appointment in a row, Professor McConnell of the University of Utah being the other, in which someone who has not only not practiced law in the State of Utah for any period of time but also does not have long standing ties to the State of Utah has been offered as a federal judicial appointee by Senator Hatch.

I have attempted with the assistance of others to provide you with what we believe to be the problems with an appointment of someone such as Mr. Cassell to the Federal Bench. Above and beyond his lack of active practice in the State of Utah is what I conceive to be an attitude which indicates that he will simply pursue a political agenda fostered by the Federalist Society on the Bench. I might add parenthetically, that I do not believe that merely because someone is conservative or for that matter, liberal, in their political leanings that that fact alone should in any way inhibit their appointment to the bench. However, when an individual has shown an unwillingness to view both sides of any legal argument as Professor Cassell has as a law professor, that does not bode well for individuals who will appear in front of him and expect a fair and honest hearing.

We have seen the slow erosion of civil rights in this country for a period of time under the guise of law and order. Professor Cassell has been at the forefront of that conservative political attitude and he has not been, in my judgment, intellectually honest in his assessment of the problems of crime in our society and the response that the Courts should take to them. Attached you will find copies of several of Professor Cassell's law reviews as Exhibit A. As Exhibit B, two analyses of those law review articles by lawyers who are knowledgeable in the field of criminal law. As Exhibit C, recent articles out of the Washington Post about false confessions, and as Exhibit D, a recent study on the death penalty. All of these items if fairly read, would indicate that Professor Cassell does not have the make-up to be appointed to the federal bench here in Utah. And I urge you to enlist the support of other right-thinking members of the Senate to actively oppose his nomination.

Sincerely,

Ronald J. Yengich

RJY/ama



**NOMINATION OF JEFFREY HOWARD, OF NEW HAMPSHIRE, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIRST CIRCUIT; PERCY ANDERSON, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; MICHAEL M. BAYLSON, OF PENNSYLVANIA, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; WILLIAM C. GRIESBACH, OF WISCONSIN, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN; JOAN E. LANCASTER, OF MINNESOTA, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA; CYNTHIA M. RUFE, OF PENNSYLVANIA, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; AND JOHN F. WALTER, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**THURSDAY, APRIL 11, 2002**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:37 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Herb Kohl presiding.  
Present: Senators Kohl, Feinstein, Feingold, Hatch, and Specter.

**STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM  
THE STATE OF WISCONSIN**

Senator KOHL. Good afternoon, and this committee will come to order.

Today, we welcome a distinguished panel of seven nominees who are before us. We also welcome the distinguished Senators and Congressmen who are here to introduce the nominees from their States. Of course, we welcome the families and the friends who are here in support.

Judicial nominations are among the most important duties of the Senate Judiciary Committee. A Federal judgeship is a lifetime appointment and a job that affects the lives of innumerable people throughout the course of the judge's tenure. The job is a great responsibility entrusted to just a very few people. All we ask is that you administer impartial justice and obey the Constitution. So we congratulate all of the nominees on their selection.

We would like to proceed in the following manner. After opening statements from committee members, we would like the Senators and the Congressmen on the first panel to introduce their nominees. Then we will invite all the nominees forward to take the oath and testify on the second panel.

The second panel will include Jeffrey Howard, to be United States Circuit Court Judge for the First Circuit; Percy Anderson, to be District Court Judge for the Central District of California; Michael Baylson, to be District Court Judge for the Eastern District of Pennsylvania; William Griesbach, to be District Court Judge for the Eastern District of Wisconsin; Joan Lancaster, to be District Court Judge for the District of Minnesota; Cynthia Rufe, to be District Court Judge for the Eastern District of Pennsylvania; and John Walter, to be District Court Judge for the Central District of California.

I myself will withhold my own introduction of Judge Griesbach, who will soon become the first Federal judge to sit in Green Bay, Wisconsin, until after our colleagues have made their statements.

So at this point I would like to ask my colleagues sitting here on the panel to make any opening remarks they would wish to make.

Senator Orrin Hatch.

#### **STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate you holding this hearing. I am pleased that the Judiciary Committee is considering the nominations of seven exceedingly well-qualified people for the Federal judiciary.

I would like to welcome all of you to the committee and, of course, our colleagues as well who will speak for them.

Before we discuss the excellent credentials of today's nominees, however, let me just take a minute to make an observation about how this hearing fits into the larger picture of the committee's work on judicial nominations.

Today marks the 337th day since President Bush announced his first 11 picks to the Federal circuit courts of appeals. Eight of those nominations have been languishing in this committee for nearly a year, with no commitments for hearings or votes any time soon. All eight received the ABA's majority rating of either "well qualified" or "qualified."

Among those are some of the very best lawyers in the history of the country, including Miguel Estrada, John Roberts and Michael McConnell, just to name three, and the rest of the eight are terrific people. This committee's unwillingness to move more expeditiously on these nominations is exacerbating the circuit court vacancy cri-

sis that exists in America today. Nearly one in five circuit court seats is vacant all across America.

When President Bush sent up his first nominees, we had 31 circuit court vacancies, and today we still have 31 circuit court vacancies. The D.C. Circuit Court of Appeals is one-third vacant, and the Sixth Circuit, just to mention two, is 50-percent vacant. Quite a number of these circuit court vacancies involve emergency areas as well.

President Bush has responded to the circuit court vacancy crisis by rapidly nominating top-notch men and women. The only obstacle standing in the way of the nominees' ability to serve the American people is this committee.

I am glad that we will consider a circuit court nominee today, but I will point out that in years past, under Republican leadership, we regularly considered two or more circuit nominees at a time. In fact, we did so on ten different occasions.

I am also particularly pleased to see nominees John Walter and Percy Anderson, from the Central District of California, here. I will bet they are happy to be here today as well, considering it has been ten years since they were initially nominated to their seats during the first Bush administration. They were both nominated in March of 1992, but unfortunately the Senate, which was controlled by the Democrats at that time, denied them a hearing.

Interestingly, they are not the only nominees pending before the committee today who were nominated by the first President Bush nearly ten years ago. Terrence Boyle for the Fourth Circuit, John Roberts for the D.C. Circuit, Henry Saad for the Sixth Circuit, Leonard Davis for the Eastern District of Texas, Andrew Hanen for the Southern District of Texas, Ronald Leighton for the Western District of Washington, and Richard Dorr for the Western District of Missouri—all seven of those nominees were nominated by the first President Bush, but never received committee action at the time. I hope that they, too, will soon receive their long-awaited hearings.

Although I would like to explain my support for each of the seven excellent nominees before us today, in the interest of time I am going to ask Chairman Kohl if the balance of my remarks could be included in the record at this point. That way, we will have more time for introductions from members and for the nominees themselves.

Let me just say that you are all excellent nominees and that I am going to support all of you. I will work with my colleagues for your swift confirmation, and I want to thank Chairman Kohl. I think Chairman Kohl has worked hard to try and resolve some of these difficulties and I personally appreciate his willingness to conduct this hearing today.

I appreciate my colleagues, but we have got to do a better job on this committee and I hope that we can in the future. But today is a good illustration of moving ahead in the right direction and I want to compliment our chairman of the full committee and our chairman of this hearing today, Chairman Kohl.

Senator KOHL. We thank you, Senator Hatch, and your full statement will be made a part of the record.

[The prepared statement of Senator Hatch follows:]

## PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

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Today marks the 337th day since President Bush announced his first 11 picks for the federal bench. Eight of those nominations have been languishing in this committee for nearly a year with no commitments for hearings or votes any time soon. All eight received the ABA's majority rating of either well-qualified or qualified. Among these are some of the very best lawyers in the history of our country, including Miguel Estrada, John Roberts and Michael McConnell, just to name three.

This Committee's unwillingness to move more expeditiously on these nominations is exacerbating the circuit court vacancy crisis that exists in America today. Nearly one in five circuit court seats is vacant all across America. When President Bush sent up his first nominees we had 31 circuit court vacancies, and today we still have 31 vacancies. The DC Circuit Court of Appeals is one-third vacant and the 6th Circuit is 50-percent vacant.

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Jeffrey Howard's nomination to the First Circuit Court of Appeals is one more example of the quality appointments that President Bush is making. Mr. Howard has the record of a great attorney and a great public servant. He has served his communities in elected and appointed office and in a myriad public and volunteer undertakings. The people of New Hampshire can be proud of him.

As New Hampshire's Attorney General, he wrote and implemented one of the nation's first effective comprehensive state wide interdisciplinary protocols to combat domestic violence. He also led the fight in New Hampshire for consumers that were the victim of fraudulent businesses. As Principal Associate Deputy Attorney General for the Justice Department, Mr. Howard was a top adviser to Attorney General William Barr, in the areas of asset forfeiture, drug enforcement, and civil rights.

Percy Anderson, nominated to be U.S. District Judge for the Central District of California began his career representing indigent clients in civil matters. He later became an Assistant U.S. Attorney in Los Angeles, where he spent six years as First Assistant Division Chief, managing criminal division affairs in the absence of the Chief of the division. In 1985, he joined the Bryan Cave firm, specializing in white collar criminal defense and aviation litigation. In 1996, Mr. Anderson became a partner with Sonnenschein Nath & Rosenthal, a Los Angeles firm, where he focuses on commercial litigation, intellectual property, products liability, false claims, and white collar criminal defense work.

Michael Baylson, nominated to be U.S. District Judge for the Eastern District of Pennsylvania, is familiar with that district because he has served as the United

States Attorney there. In that capacity, he developed a reputation for adopting new and successful strategies for the war on drugs, including the tactic of identifying a drug gang, then infiltrating it to learn all its members and indicting them en masse. He also was an early proponent of the "Weed and Seed" program designed to "weed out" drug dealers from a community and then "seed" those communities with social services and financial support.

William C. Griesbach, nominated to be U.S. District Judge for the Eastern District of Wisconsin, comes to us with seven years of experience on the bench, having served as a Wisconsin State Circuit Court Judge since 1995. Prior to his elevation to the bench, Judge Griesbach obtained substantial experience in both criminal and civil litigation: He spent eight years as an Assistant District Attorney for Brown County, Wisconsin handling criminal matters, and five years before that at a Green Bay, Wisconsin law firm working on civil cases.

Joan E. Lancaster, nominated to be U.S. District Judge for the District of Minnesota, began her career as an Assistant City Attorney, trying approximately 12 jury and 40 court trials during her service. She then spent ten years as an Assistant U.S. Attorney for the District of Minnesota. After two years of private practice, Justice Lancaster was named as a District Court Judge in the 4th Judicial District in Minnesota. Since 1998, she has served as an Associate Justice on the Minnesota Supreme Court.

Cynthia M. Rufe, nominated to be U.S. District Judge for Eastern District of Pennsylvania, is another example of how President Bush has tried to create a diverse federal judiciary. Judge Rufe can only be described as a true champion of the rights of children and women. She also was a high school teacher. In addition to her charity work, Judge Rufe has also run the gamut of the legal profession. She was a Public Defender for 5 years and went on to start her own private practice. As a judge, she was appointed by the Pennsylvania Supreme Court and served with distinction as a member of the Appellate Procedural Rules Committee.

John F. Walter, nominated to the U.S. District Court for the Central District of California, has gained experience in private practice and government service. Mr. Walter has served as an Assistant U.S. Attorney in the Criminal Division, Fraud and Special Prosecutions Unit, where he prosecuted the then-largest bank burglary in the U.S. He has been in private practice since 1972, working not only as a civil litigator but also as a criminal defense lawyer. As a member of the Federal Indigent Defense Panel, Mr. Walter has represented more than 75 indigent defendants charged with federal crimes in federal court and devoted thousands of pro bono hours to these cases.

Senator KOHL. Senator Russ Feingold.

**PRESENTATION OF WILLIAM C. GRIESBACH, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN BY HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN**

Senator FEINGOLD. Thank you, Mr. Chairman. Of course, I know who is the senior Senator and who is the junior Senator, but I do need to leave after this so I am going to speak on behalf of the nominee, with your permission, Mr. Chairman.

First, I thank you for working with me on these nominations. I think it has been an excellent experience and it has turned out well for our State, and I appreciate your leadership.

I am also really happy to see our two Congressmen from Wisconsin. You should have heard Congressman Tom Barrett talk about our nominee, Mr. Griesbach. It was one of the nicest personal tributes I have ever heard, and I am sure he will explain in his comments about how well he knows you from so many years. Tom, of course, is a person I have a lot of regard for in this respect.

Congressman Green, your area, our area, has waited far too long for this wonderful opportunity. You worked hard to make this possible and we are all very happy that we will have a Federal judge in the northeastern part of the State.

Mr. Chairman, it is a great pleasure to welcome Judge Griesbach to the Senate and to join so many colleagues in introducing him to the committee. As you know very well, Judge Griesbach's nomination was the product of a collaborative process between you and me and the chairman of the Judiciary Committee in the House, Mr. Sensenbrenner, and the White House. I am very pleased with this nomination and I wholeheartedly support it.

Judge Griesbach has a distinguished record as an attorney and a judge in Brown County, Wisconsin. He is widely respected in Green Bay and within Wisconsin's legal community. In fact, a 1998 survey by the Green Bay News Chronicle of attorneys who practice in Brown County rated Judge Griesbach first out of eight circuit judges in the county in all five categories that were considered—temperament, fairness, legal scholarship, work habits, and decisiveness. The paper called this achievement a quintuple crown, and I agree that that is remarkable. Some of the comments from attorneys in this confidential survey were “born to be a judge,” “best judge we have” and “as good as they get.”

After interviewing Judge Griesbach and reviewing all that his colleagues have said about him, I am confident that he will make an excellent Federal judge. This is an exciting time for the judicial system in Wisconsin and the judge, if confirmed, will play a key role in the new division of the Eastern District in Green Bay.

A Federal court in northeastern Wisconsin has been a long time in coming and I look forward to it finally becoming a reality. I mentioned before that this nomination was a result of a collaborative process. As you know, Mr. Chairman, Wisconsin Senators have been using the Wisconsin Federal Nominating Commission to screen candidates for judicial vacancies since 1979. It has been used by Senators of both parties under Presidents of both parties. The commission process reflects the longstanding progressive tradition of good government in Wisconsin.

The success of this process is self-evident, consistently yielding highly qualified nominees well-respected in the State's legal community and agreeable to both parties. I am proud of our State's history on this issue and I think that Judge Griesbach is a prime example of what the commission process offers to the State and the country. I hope that our commission can continue to serve as a model for other States in the nomination process, and I urge the White House to work with us on future nominations, not only to the district court but also the court of appeals, should there be a vacancy.

Again, Judge Griesbach, welcome to the hearing today. I want to also congratulate all the other nominees. Although I can't stay for the questioning, I do look forward to moving your nomination through the committee process as fast as possible and I look forward to the honor of voting to confirm you on the floor of the Senate promptly.

Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator Feingold.

Before we move to introductions from Senators and Congressmen, I would like to ask Senator Specter if he has any remarks to make at this point.

**PRESENTATION OF CYNTHIA M. RUFÉ AND MICHAEL M. BAYLSON, NOMINEES TO BE DISTRICT JUDGES FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman. I do, and thank you for presiding at these hearings to move along the judicial nomination process.

I have the pleasure and honor to introduce two of the nominees, Judge Cynthia Rufe from Bucks County, Pennsylvania, a distinguished jurist, had been a distinguished lawyer before she became a distinguished jurist, and Michael Baylson, who has been United States Attorney for the Eastern District of Pennsylvania and is a chief litigator for one of the mega firms in Philadelphia and has made quite a success of his career after a very shaky start as an assistant district attorney in my office. [Laughter.]

In light of the loaded docket and the many colleagues who are here, I will abbreviate my comments to that effect, Mr. Chairman.

Senator KOHL. We thank you, Senator Specter.

We will now move to introductions from the nominees' States, from Senators and Congressmen. Due to time pressures, Senator Gregg has asked if we could give him the first opportunity to make an introduction.

Senator Gregg?

**PRESENTATION OF JEFFREY HOWARD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIRST CIRCUIT BY HON. JUDD GREGG, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator GREGG. Thank you, Mr. Chairman. I do appreciate that. I have the head of NIH coming to a hearing at three o'clock.

It is my pleasure to join with Senator Smith today in bringing to the committee a person who has exceptional qualifications and who is an extremely talented attorney, as well as a decent and very honorable individual, and that is Jeff Howard, who is the nominee for the First Circuit Court of Appeals.

I have known Jeff Howard for years. He comes out of the tradition which I think is an extraordinarily strong tradition which we have in the State of New Hampshire of sending people to the circuit court in Boston who have talent, ability, and bring a great deal of common sense to the judiciary. We have had gentlemen like Judge Hugh Bounds, gentlemen like Judge Norm Stahl and Judge David Souter, who have, in the New Hampshire tradition, brought common sense to Boston as the circuit court meets.

Jeff Howard will accomplish that, also. He was U.S. Attorney, he was the attorney general. I had the good fortune when I was governor to participate in his appointment in that position. He will bring to the judiciary the knowledge of the real-world business of law enforcement, having served in both those two very critical positions in law enforcement. He has been a country attorney, also, as well as a practicing attorney in a fairly large law firm in Manchester.

All those talent put together make him a person of exceptional breadth of experience, which is what I think you need on the court.

He has seen all sorts of different situations and understands the implications of them, and as a result, in my opinion, will bring to the circuit court of appeals the type of knowledge, life experience, and common sense which we need.

His intelligence, his capability and his integrity are beyond question. He will be an exceptional addition to our country system, and I appreciate the courtesy of the committee in holding this hearing and endorse him with my most enthusiastic endorsement.

Senator KOHL. We thank you, Senator Gregg.

Now, we will move on to Senator Robert Smith, from the State of New Hampshire.

**PRESENTATION OF JEFFREY HOWARD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIRST CIRCUIT BY HON. BOB SMITH, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE**

Senator SMITH. Thank you very much, Mr. Chairman, and Senator Hatch and other members of the committee. Thank you very much for having this hearing today.

I am very proud to introduce Jeffrey Howard as the nominee for the First Circuit Court of Appeals. His brother, Mark, is here, and I am sure he will be introducing them in a few moments, and his wife, Marie, and two sons, John and Joseph, who so far have been very good throughout this hearing. I said so far.

I want to start, Mr. Chairman, by saying thank you to the chairman of the committee, Senator Leahy, for his cooperation in this matter. It could be very easily the other way, but I talked to Senator Leahy a few weeks ago on the floor. He asked me to put a note in writing to him and he said he would bring this nominee forth and he did, and I appreciate it very much. It may stem from the fact that the nominee has some dairy farm experience. Maybe that is why Senator Leahy decided to move it quickly. I don't know, but for whatever reason I am very grateful to the chairman for that.

Let me first say as the senior Senator from New Hampshire I was very proud to suggest that Jeff Howard be the nominee for this position to the President. The White House sought our input and I was pleased to provide it. The Senate has a unique responsibility in this process, as you well know, but the President does the nominating, but he does seek the advice and sometimes he gets the consent of the Senate for the nominees.

President Bush, I think, has made a great selection here and I am very happy to be here in support of Jeff Howard. I am not going to go through it all, but he has an impressive array of legal experience that well qualifies him for this job, Mr. Chairman. He was U.S. Attorney for New Hampshire from 1989 to 1993. He litigated numerous, numerous cases at both the trial and the appellate level, and was a member of the Attorney General's Advisory Committee of U.S. Attorneys.

He received the Attorney General's Edmund Randolph Award, as well as the U.S. Attorney's Award—no small achievement. He has Federal experience that includes a stint as principal associate Deputy Attorney General at the U.S. Department of Justice from 1991 to 1992, and he performed this job at the request of former Attorney General Bill Barr.



In addition to his work as a U.S. Attorney, he served as Attorney General of New Hampshire from 1993 to 1997, and even Deputy Attorney General in 1988 and 1989. He has been involved in thousands of litigated matters, covering the full range of issues that are going to come before him as a Federal judge.

It might be interesting to note also something that certainly got my attention. He has been either on the brief or the lead counsel in more than 100 cases in the First Circuit, the court to which the President has nominated him. Over the last 10 years, he has performed approximately 2,500 hours of pro bono work for victims of domestic violence. I think that says a lot about the kind of person we are bringing forth to this court.

He grew up on his grandfather's dairy farm in Cornish, New Hampshire. I also grew up on a dairy farm, so we have a lot in common. The cows get milked twice a day, as we all know, four or five o'clock in the morning and seven or eight o'clock at night, regardless of whether it is Christmas or New Year's, or whatever day it is.

Then he went on to graduate from Plymouth State College with a B.A., received his law degree from Georgetown, and was editor of the American Criminal Law Review. This is a well-qualified person to be a judge and I am honored to be here to support that nomination, Mr. Chairman.

Thank you again for having the hearing today.

Senator KOHL. We thank you, Senator Smith.

Now, we will move on to the Senators from Minnesota.

Senator Wellstone?

**PRESENTATION OF JOAN E. LANCASTER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA BY HON. PAUL WELLSTONE, A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator WELLSTONE. Thank you, Mr. Chairman. Now, I know where that handshake comes from you.

Mr. Chairman, I am here with my colleague, Senator Dayton, and we both have the great honor of introducing Justice Joan Ericksen Lancaster today. Before I talk about her many accomplishments, although I am just going to summarize to be brief, I want to take a minute and welcome and acknowledge two of her greatest accomplishments of all, which are her children, Claire and John. I know they will be introduced later by you, but I want to just mention to you, Mr. Chairman, that John actually has some clothing, I think, trousers or pants, that he bought at Kohl's department store. I just thought I would mention that.

Senator KOHL. A good man. He is a very good man.

Senator WELLSTONE. Also accompanying her is her good friend, John Stanoch, whom I would like to welcome as well.

Justice Lancaster's qualifications are outstanding. She is currently serving with distinction as Associate Justice of the Minnesota Supreme Court and has held that position since 1998. She has also served as judge of the 4th District Court in Hennepin County for three years and as a partner in the law firm of Leonard, Street and Deinard in Minneapolis for 2 years. Particularly relevant to this position for which she is nominated is her 10 years

as Assistant U.S. Attorney in the District of Minnesota, where she worked extensively in both the civil and criminal divisions.

I am particularly impressed with Judge Lancaster's compassion and commitment to creating a better, more just society in Minnesota and in our country. She was co-chair of the governor's Task Force on Fetal Alcohol Syndrome. She chaired the Minnesota Juvenile Justice Services Task Force that studied the way Minnesota State courts handle juvenile delinquency.

Through these and other commitments, as well as her many professional accomplishments, I think that without a doubt that is one of the reasons we are really proud that Judge Lancaster has earned the high regard of her peers, including a "well qualified" from the American Bar Association.

In my conversations with judges and lawyers who have practiced with and argued before Justice Lancaster, it is clear that she is widely respected as a highly responsible, thoughtful, and independent judge. I just want to finish by sharing some of the praise that she has received from the editorial boards of a couple of our large newspapers.

The Star Tribune wrote, "The high court's newest member, Joan Erickson Lancaster, is a gifted jurist. Her colleagues praise her vivid intellect and simply wonderful personality." The Pioneer Press wrote, "Lancaster brings impressive experience and thoughtful independence to the court." Finally, in the words of the Duluth New Tribune, "The court benefits from her federal experience and her strong passion for justice." I love those words, "strong passion for justice."

The merit of her nomination is also reflected by the presence here today of Chief Judge James Rosenbaum, of the Minnesota District Court, who supports her nomination. Judge Rosenbaum is an excellent jurist and his strong interest in her nomination is, I think, important for this process.

Justice Lancaster has broad bipartisan support. I would like to congratulate Congressman Ramstad for his excellent nomination. Once nominated, she was immediately welcomed by Senator Dayton and me. I hope the committee will move forward to the immediate confirmation of this outstanding judge.

I thank you, and I want to say that not only is she from Minnesota, but also from Northfield, Minnesota, which is our home where we raised our children. So for a town of about 12 or 13,000, including two colleges, assuming everything works out well, and I am really sure it will, this will be such a huge honor.

Thank you very much.

Senator KOHL. Thank you, Senator Wellstone.

Senator Dayton?

**PRESENTATION OF JOAN E. LANCASTER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA BY HON. MARK DAYTON, A U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator DAYTON. Thank you, Mr. Chairman. For a start, I couldn't help notice that I am the only one up here who doesn't merit "The Honorable" in front of his name. I don't want to explore

the committee's reasons for making that determination in a public setting, but I would like to get the roll call vote on that decision.

I am very, very pleased, Mr. Chairman, to join with my distinguished senior colleague, Senator Wellstone, in introducing Joan Lancaster to this committee and respectfully urging your approval of her nomination.

Justice Lancaster is a very talented, superbly well-qualified, and highly respected jurist in Minnesota. I commend the President for making an excellent selection and Justice Lancaster has my full support.

She was appointed to the Minnesota district court by Republican Governor Arne Carlson in 1995, and then appointed by Governor Carlson to the Minnesota Supreme Court in 1998. There, she served under two chief justices, one a former Democratic lieutenant governor and currently a former Republican State legislator. Both of them have given Justice Lancaster's nomination their enthusiastic support.

Since the announcement of her nomination, I have had many attorneys and other Minnesotans knowledgeable about our judiciary unsolicited call me, write me, or break out of other conversations and speak to me about Judge Lancaster. All of them said essentially the same thing about her. They consider her to be an excellent judge. They characterized her judicial philosophy variously from "moderate" to "conservative." However, regardless of that characterization, they all said that she is principled, hard-working, and committed to high professional and legal standards.

The fact that the nomination of a Republican President is being endorsed by two Democratic Senators here today attests to Justice Lancaster's exceptional qualifications. Again, I think the President has made an excellent selection.

I also want to thank personally Chairman Leahy and his staff for their swift and accommodating response to this nomination. Judge Lancaster's nomination was submitted by the White House to the Senate on January 24 of this year. The American Bar Association's rating of "well qualified" was received by this committee on March 22, and on that same day the Senate adjourned for our two-week Easter recess.

I met with Justice Lancaster last Thursday, and Senator Wellstone's and my office contacted Chairman Leahy's staff that afternoon. Here we are, Mr. Chairman, one week later before this committee. It would have been impossible for anyone to have provided these two Senators and this nominee a more expedited review than Senator Leahy has made possible, and I want to thank him for doing so. I want to thank you, Mr. Chairman, for moving so expeditiously today with these nominees. I again want to thank the committee and give my unqualified support.

Thank you, Mr. Chairman.

Senator KOHL. We thank you for your statement, Senator Dayton.

Now, we will go to the two Congressmen from Wisconsin.

First, Congressman Mark Green.

**PRESENTATION OF WILLIAM C. GRIESBACH, NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WIS-  
CONSIN BY HON. MARK GREEN, A REPRESENTATIVE IN CON-  
GRESS FROM THE STATE OF WISCONSIN**

Representative GREEN. Thank you, Mr. Chairman and Senator Hatch. I am honored to be here and I appreciate your scheduling this hearing as quickly as you have.

Today, along with my senior colleague, Tom Barrett, I have the privilege of introducing to you an exceptional jurist, and more importantly an exceptional man, someone whose nomination I believe really merits the full and enthusiastic support of this committee.

William Griesbach has an impressive legal career, from his early days in private practice, through his days in the district attorney's office, through his heralded work in the Brown County circuit court system, to this new, proud moment.

But I am not here to talk about what Judge Griesbach looks like on paper. After all, you have the record before you. There is simply no question but that he is superbly qualified for this challenge, that he has the intellect, the knowledge, and the experience for this job.

As I am sure you agree, however, there is much more to being a great judge than just those tangible qualities. It takes qualities that are neither Republican nor Democrat, conservative nor liberal, qualities that are much tougher to put your finger on, qualities that you can only really discover when you get to know someone personally. That is why I support Judge Griesbach so enthusiastically and why I am here to talk about Bill Griesbach, the person.

Bill has the temperament for this position. He is tremendously principled, eminently fair, unshakably honest, and tenaciously decisive. People in Brown County, Wisconsin, where I practice law, admire him because they know that no matter who they are, no matter where they come from, they will receive a fair shake in his courtroom. In other words, he possesses the qualities that separate merely a good judge from an outstanding one.

For these reasons, as well as his base qualifications, a bipartisan Federal nominating commission that, Senator Kohl, you helped to establish put his name at the top of the list for this new position.

I fought hard along with you, Mr. Chairman, to win this needed new Federal judgeship for northeastern Wisconsin. It took a lot of work, but we finally succeeded. This is the man we need for that job, for the betterment of my area, northeastern Wisconsin, the State of Wisconsin, and our Nation's Federal bench. I hope and trust this committee will agree.

Again, I thank you for the great privilege of being able to appear before you. Thank you.

Senator KOHL. Thank you, Congressman Green.

Congressman Tom Barrett.

**PRESENTATION OF WILLIAM C. GRIESBACH, NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WIS-  
CONSIN BY HON. THOMAS M. BARRETT, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF WISCONSIN**

Representative BARRETT. Thank you, Senator Kohl, Senator Hatch, and Senator Feinstein. It is an honor to be here.

I want to begin by complimenting you, Senator Kohl, along with Senator Feingold, for moving this nomination, and moving it in a bipartisan fashion. I think the process that we have in Wisconsin really is a model and it allows us to choose the best person. There were a lot of excellent, excellent candidates for this position, but I am proud to be here today on behalf of my friend and former classmate, Bill Griesbach.

You often see the little hangings on refrigerators that everything you need to know in life you learn in kindergarten. I don't know if that is true because I haven't known Bill since kindergarten, but I have known him for 35 years, because we were high school classmates together.

By the time he hit high school, he was clearly someone who was ready to be a judge, and I say that because as the 6th out of 12 children, you learn how to mediate. He could deal with the older brothers and sisters and the younger brothers and sisters because he was perfectly situated.

Even 35 years ago, Bill had the temperament, the intelligence and the integrity to be a judge. He was the type of person when you were playing a pick-up game of basketball or softball, it might not be so much fun because if there was always a call, he would make the call and everybody knew it was a fair call. He is just that type of person. He has always been that type of person. He is the type of person that anyone could trust with anything of importance in their lives.

He studied at Marquette, and studied very, very hard, where he was an excellent, excellent student. But it wasn't just studying. He met his wonderful wife, Joanne, there as well, and they have four lovely daughters, three of whom are with them today. He then clerked for the Seventh Circuit and did a wonderful job there.

But it was really in Green Bay where he first entered private practice and then worked in the D.A.'s office that I think people recognized that Bill really has the special qualities and temperament to be a judge. As Senator Feingold said, the ratings from the attorneys in Brown County underscore the respect that Bill has earned as a member of the bench. If you look at his appeal record, you will see that people don't even want to appeal him because they feel that they get a fair shot from Bill Griesbach.

So I am tremendously honored to be here today. I am ecstatic for Bill. I am ecstatic for his family. But, frankly, I am more ecstatic for the people in the Eastern District of Wisconsin because you and the other members of this committee could not have done a better job and President Bush could not have done a better job than picking Bill Griesbach to fill this position.

So thank you, and again I thank Senator Feingold and the others for doing this because in terms of integrity, honesty and tenaciousness, this is a grand-slam home run.

Thank you.

Senator KOHL. We thank you, Congressman Barrett.

We would now like to turn to the Senator from California, Senator Feinstein.

**PRESENTATION OF PERCY ANDERSON AND JOHN F. WALTER,  
NOMINEES TO BE DISTRICT JUDGES FOR THE CENTRAL DIS-  
TRICT OF CALIFORNIA BY HON. DIANNE FEINSTEIN, A U.S.  
SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman and Senator Hatch. Before I introduce the two nominees from California, I would just like to acknowledge the presence of Consuelo Marshall, the Chief Judge of the Central District of California, and Sherry Carter, the Clerk of the Central District of California, who are here today. I know my colleagues on the committee welcome you, and so thank you very much for being here.

Mr. Anderson and Mr. Walter are the first nominees to come out of California's bipartisan judicial advisory committee. The White House, in conjunction with Senator Boxer and I, established this committee. It is bipartisan, split equally, and the two nominees have come out of that committee essentially by a unanimous vote of the committee. So this, I think, means that this system can work and should work, and can also produce highly qualified judicial candidates. So I hope they serve as some kind of an example.

I would now like to introduce Percy Anderson. He is joined by several members of his family at today's hearing, including his brother, Jerry Anderson, his nephew, Caulin Anderson, Vivian Murphy, and Tanya Murphy. I just want to extend our warm welcome to all of them.

Mr. Anderson is a resident of Inglewood, California. He has spent his entire 25-year legal career practicing law in Southern California. After graduating from UCLA Law School, Mr. Anderson spent three years working for San Fernando Valley Neighborhood Legal Services before joining the Criminal Division of the United States Attorney's office in Los Angeles.

During his six-year tenure as Assistant United States Attorney, he specialized in Federal criminal litigation and he rose to the position of First Assistant Division Chief. In 1985, Mr. Anderson left the U.S. Attorney's office to enter into private practice. He is currently a partner at Sonnenschein, Nath and Rosenthal, where he specializes in commercial litigation and white-collar criminal defense.

Judges and private practitioners in the Los Angeles area consistently praise him for his legal acumen, his high ethical standards, and his professionalism. Dale Bonner, an attorney at Hogan and Hartson, said that Mr. Anderson, and I quote, "exemplifies the high level of integrity, thoughtfulness and temperance which are important to a strong Federal judiciary." I hope the committee will agree with this.

We also have comments from Judge Irma Gonzalez as to his honesty and dedication, and District Judge Lourdes Baird as to his competence. The American Bar Association gave him high marks, with a substantial majority of the committee awarding him their highest rating of "well qualified."

I would now like to introduce Jack Walter. He is a resident of Pacific Palisades, California, and he is joined today by his wife of 35 years, Joyce Walter, and his friends Customs Commissioner Robert Bonner, Kim Bonner, Jan Handzlik, and Jan's daughter,

Anna. Mr. Walter has two children who unfortunately couldn't attend today's hearing.

He comes before this committee, I believe, with outstanding legal credentials. After graduating from Loyola Law School, Mr. Walter served as an Assistant U.S. Attorney in the Criminal Division and the Fraud Special Prosecutions Unit of the U.S. Attorney's office in Los Angeles.

Since 1976, he has practiced law in a firm he co-founded, Walter, Firestone and Richter. His private practice has focused on civil and criminal litigation before both State and Federal courts. He has served on the Federal Indigent Defense Panel in the Central District for over 20 years. In this capacity, he successfully briefed and argued the case of *U.S. v. Johnson* before the United States Supreme Court. Over the years, he has represented over 75 indigent defendants who were charged with crimes in Federal court.

Mr. Walter has also served as a judge pro tem in the Santa Monica Municipal Court for over five years, and he has a number of supporters in the legal community, including Jan Handzlik, Chairman of the American Bar Association White Collar Crime Committee, and numerous district court judges. The ABA rates him as "well qualified."

Before concluding, I just want to stress to the committee how urgent it is to fill these vacancies in the Central District of California. The Central District now has six vacancies. It is perhaps the most acute shortage of unfilled judgeships of any court in the country. The Administrative Office of United States Courts has designated four of these vacancies as judicial emergencies.

With the nominations of Percy Anderson and Jack Walter, we are taking a much-needed step forward to alleviate the judicial crisis, at least in this district in California. So I am very hopeful that both can be speedily confirmed.

I very much want to thank the chairman of the committee for bringing these two nominees before the committee, and thank you, Senator Kohl and Senator Hatch.

**PRESENTATION OF WILLIAM C. GRIESBACK, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN BY HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN**

Senator KOHL. Thank you, Senator Feinstein.

From my own State of Wisconsin I also want to welcome Judge William Griesbach to the Senate Judiciary Committee today. We also welcome his wife, Joanne, his daughters, Maryanne, Rachel and Elisa. We welcome his brother, John, his niece, Maggie, and his colleague, Judge Donald Zuidmulder.

As we have heard from several others already here today, he is an exemplary State court judge. His nomination is supported throughout Wisconsin, and we trust that he will be a top-flight Federal judge.

Others have already gone over his legal background, but let me comment briefly on what a fine man Judge Griesbach is. He is deeply committed to his family, to his community, and to the law. He possesses all the best qualities that we look for in a judge—intelligence, diligence, humility, and integrity.

We are confident that the people of Green Bay and all of Wisconsin will be enormously proud of him and that he will serve them well. The Green Bay community has waited a long time for a Federal judge. When Judge Griesbach is sworn in, we think they will find that it was well worth the wait.

Green Bay needs and deserves a Federal judge. With Congressman Green and Senator Feingold, we fought a long time to create this judgeship. A Federal judge in Green Bay will mean swifter and surer justice for all of northern Wisconsin.

Judge Griesbach's nomination proves once again that the process we use in Wisconsin to choose Federal judges and U.S. Attorneys ensures excellence. The Wisconsin Federal Nominating Commission has been used to select Federal judges and U.S. Attorneys in Wisconsin since 1979 through Republican and Democratic administrations, and the tenure of Senators from both parties. Through a great deal of cooperation and careful consideration and by keeping politics to a minimum, we always find qualified candidates.

Judge Griesbach, having survived the rigors of the Wisconsin Federal Nominating Commission, your appearance before the Senate Judiciary Committee today will be as pleasant as a visit to Lambeau Field on a Sunday in October. Again, we are pleased to have you with us and we look forward to your testimony.

At this time, I would like the seven nominees—

Senator FEINSTEIN. Mr. Chairman, if I may, Senator Boxer had wanted to be here to introduce these two judges that I introduced. If I may, I would like to submit her statement for the record.

Senator KOHL. We will make it a part of the record.

We will also make Senator Leahy's comments a part of the record.

We have received a number of letters of recommendation for Judge Griesbach that we will also make a part of the record.

Senator HATCH. If you could also make Senator Santorum's statement a part of the record?

Senator KOHL. And Senator Santorum, in addition, also has a statement for the record.

Senator HATCH. Thank you, Mr. Chairman.

Senator KOHL. At this time, if the seven nominees will step forward and position themselves, we will have Mr. Howard on my left, then Mr. Anderson, Mr. Baylson, Judge Griesbach, the Honorable Joan Lancaster, the Honorable Cynthia Rufe, and Mr. John Walter.

Will you raise your right hands and repeat the oath as I administer it?

Do you swear that the testimony you shall give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. HOWARD. I do.

Mr. ANDERSON. I do.

Mr. BAYLSON. I do.

Judge GRIESBACH. I do.

Judge LANCASTER. I do.

Judge RUFÉ. I do.

Mr. WALTER. I do.

Senator KOHL. We thank you. If you will sit down, we will proceed.



Starting with you, Mr. Howard, if you would like to make a statement or introduce members of your family, we would be happy to hear from you at this time.

**STATEMENT OF JEFFREY HOWARD, NOMINEE TO BE CIRCUIT  
JUDGE FOR THE FIRST CIRCUIT**

Mr. HOWARD. Thank you, Mr. Chairman. I would like to express my gratitude for you holding this hearing today. I appreciate it very much.

I would like to introduce my wife, Marie, who is here with me today; my sons, Joseph and John; as well, my brother, Mark, who is an Assistant United States Attorney. I was delighted to learn that former New Hampshire governor Stephen Merrill is in town and he has dropped by. As well, my friend, Nick Guess, is here. Representative Charles Bass was here a few moments ago.

Thank you very much.

[The biographical information of Mr. Howard follows:]

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Jeffrey Robert Howard

2. Address: List current place of residence and office addresses).

Residence

Salisbury,  
New Hampshire

Office

c/o Bingham Consulting  
34 Fir Street  
Manchester, NH 03301

3. Date and place of birth.

November 4, 1955 - Claremont, New Hampshire

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Marie Patricia Wilkinson Howard  
formerly Marie Patricia Wilkinson  
Homemaker

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Georgetown University Law Center 1978-81 J.D., May 1981  
Plymouth State College 1975-78 B.A., May 1978  
Union College (N.Y.) 1973

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

2001 Jeffrey R. Howard, Esq., sole proprietor  
1997-2001 Jeffrey R. Howard, P.C., president  
2000-2001 Choate, Hall & Stewart, of counsel  
1997-2000 Choate, Hall & Stewart, partner  
1993-97 Attorney General, State of New Hampshire  
1989-93 United States Attorney for the District of NH

1991-92 United States Department of Justice, Principal  
 Associate Deputy Attorney General  
 1988-89 Office of the New Hampshire Attorney General,  
 Deputy Attorney General  
 1985-88 Office of the New Hampshire Attorney General,  
 Associate Attorney General in charge of Division of  
 Legal Counsel  
 1984-85 Office of the New Hampshire Attorney General,  
 Consumer Protection and Antitrust Division Chief  
 1983-84 Office of the New Hampshire Attorney General,  
 Assistant Attorney General, Consumer Protection and  
 Antitrust Division  
 1981-83 Office of the New Hampshire Attorney General,  
 Attorney, Consumer Protection and Antitrust  
 Division  
 1980 Board for Correction of Naval Records, legal intern  
 1980 Kew Garden Apartments, desk clerk  
 1979 Lebanon, New Hampshire Police Department, special  
 police officer  
 1978 Stan Laro, Builder, carpenter

Nonprofit and other organizations:

2000-2001 Town of Salisbury, NH, alternate library trustee  
 1999 American Heart Association, NH Heart Walk chairperson  
 1997-2001 The Hundred Club New Hampshire, member  
 1997-2000 National Association of Former United States  
 Attorneys, member  
 1997-98 Plymouth State College, President's Advisory  
 Committee, member  
 1995-98 Plymouth State College Alumni Association,  
 Robert Frost Award Committee, member  
 1994-97 NH Commission on Domestic Violence, member  
 1993-97 National Association of Attorneys General, member  
 1993-97 NH Police Standards and Training Council, member  
 1993-95 NH Supreme Court, Character and Fitness  
 Committee, member  
 1991-93 United States Attorney General's Advisory Committee  
 of United States Attorneys, member  
 1989 D.A.R.E. New Hampshire, incorporator  
 1988-89 NH Judicial Council, member  
 1988-89 Christa McAuliffe Memorial Committee, member  
 1988-89 NH Police Standards and Training Council, member  
 1988-89 NH Supreme Court, Character and Fitness  
 Committee, member  
 1987-89 NH Commission on the Bicentennial of the United  
 States Constitution, member

7. Military Service: Have you had any military service? If so, give particulars, including the dates; branch of service, rank or rate, serial number and type of discharge received.

No. In 1973 I was nominated by Senator Norris Cotton and Representative James Cleveland for appointment to the United States Military Academy at West Point but was not admitted, as a result of a congenital birth defect of the lumbar vertebrae.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Salisbury, NH Citizen of the Year 2000  
Elected to academic honor society Phi Kappa Phi 1997  
Attorney General's Edmund Randolph Award 1993  
United States Attorneys Award 1992  
Numerous law enforcement and victims rights recognitions

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

NH Bar Association 1981-2001, member  
NH Bar Association Corporations, Banking  
and Trade Regulation Committee 1983-84, member  
NH Bar Association Continuing Legal Education  
Panel on consumer protection issues 1983  
NH Supreme Court Committee on Character and Fitness,  
1988-89, 1993-95, member  
NH Judicial Council 1988-89, member  
Numerous ad hoc committees and conferences attended as  
member of National Association of Attorneys General,  
1993-97 and as United States Attorney and Principal  
Associate Deputy Attorney General in the United States  
Department of Justice, 1989-93

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None active in lobbying.

The Hundred Club of New Hampshire, aids families of  
deceased firefighters and law enforcement officers  
Phi Kappa Phi, academic honor society

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

New Hampshire Supreme Court 1981  
United States District Court, District of NH 1981  
Supreme Court of the United States 1993

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"A Reference Outline of New Hampshire Trade Regulation and Consumer Protection Laws," New Hampshire Bar Journal, Vol. 25, No.1, Oct. 1983 (Primary author was Richard V. Wiebusch, Esq.) (Copy attached)

"Magna Carta," article in New Hampshire, the State That Made Us a Nation, 1989 (Copy attached)

"'Live Free or Die' is a Motto Worth Defending," op-ed in The Manchester Union Leader and Sunday News, August 16, 1999 (Copy Attached)

As a former public official for almost two decades and as a former candidate for Governor of New Hampshire, I made numerous speeches. Many, if not most, involved legal or law enforcement policy. However, it has not been my practice to write my speeches. Accordingly, I have no copies to provide. In addition, as Attorney General of New Hampshire and as a member of the Attorney General's staff before that, I wrote or edited many legal opinions which, although public documents, have not been published. It is also likely that on occasion I have served on ad hoc committees or groups within the United States Department of Justice or the New Hampshire Attorney

General's Office that may have issued one or more reports. I have been unable to discover any copies of reports from these endeavors.

Finally, I recall testifying before Congressional Subcommittees on two occasions. I do not have written testimony from either appearance. The first appearance was in mid-1992 before a House Subcommittee chaired by the late Representative Moakley of Massachusetts and was an uneventful routine oversight hearing concerning the national asset forfeiture program of the United States Department of Justice. As then Principal Associate Deputy Attorney General with oversight responsibility for the program, I believe I made oral comments to the Subcommittee about various of the program's expenditures and receipts.

The second appearance was in late 1995 before a Senate Judiciary Subcommittee investigating the Ruby Ridge incident and chaired by Senator Specter. At the time I was Attorney General of New Hampshire, but the questions the Subcommittee had for me involved my recollection that, as a Department of Justice official during the Ruby Ridge incident in 1992, I had been advised by the FBI of the shooting of Samuel Weaver several days before the date given in the FBI official reports as the date the FBI learned of his death. I do not know that the Subcommittee was able to reconcile the conflict in my (possibly faulty) memory of the incident and the official FBI reports. In any event the matter was not mentioned in the Subcommittee's report of its hearings.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. May 7, 2001

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed, or where your judgment was affirmed with significant criticism

of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

All Appointed:

Attorney, Office of NH Attorney General, 1981-83  
 Assistant Attorney General, State of NH, 1983-85  
 Chief, Consumer Protection and Antitrust Division, Office of NH Attorney General, 1984-85  
 Associate Attorney General in charge of Division of Legal Counsel, Office of NH Attorney General, 1985-88  
 Deputy Attorney General, State of NH, 1988-89 (numerous boards and commissions *ex officio*)  
 United States Attorney for the District of NH, 1989-93  
 Principal Associate Deputy Attorney General USDOJ, 1991-92  
 Attorney General, State of NH, 1993-97 (numerous boards and commissions *ex officio*)  
 Alternate Library Trustee, Town of Salisbury, NH 2000-01  
 NH Legislative Ethics Committee (public member) 2001

Unsuccessful primary candidate for Governor of NH, 2000

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have practiced alone since February 1, 2001.

Jeffrey R. Howard, Esq.  
11 Hensmith Road  
Salisbury, NH 03268

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1981-89 Office of the Attorney General, State of NH  
33 Capitol Street, Concord, NH 03301

Employed as an attorney in various capacities, achieving the position of Deputy Attorney General, 1988-89.

1989-93 United States Attorney for the District of NH  
55 Pleasant Street, Concord, NH 03301

Served as United States Attorney.

1991-92 United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Appointed by Attorney General Barr to assist the Deputy Attorney General in supervising various departmental components as Principal Associate Deputy Attorney General.

1993-97 New Hampshire Attorney General  
33 Capitol Street, Concord, NH 03301

Served as Attorney General of New Hampshire.

1997-01 Choate, Hall & Stewart  
Exchange Place  
53 State Street, Boston, MA 02109

Lead partner in firm's New Hampshire office. Civil litigation, regulatory actions and counseling business and institutional clients. Became of counsel in May 2000 and ran for Governor of New Hampshire.

2001 Jeffrey R. Howard, Esq.  
11 Hensmith Road  
Salisbury, NH 03268



Sole proprietorship. Counsel business and institutional clients on litigation strategies.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1981 to 1997 I was a public servant. Since then I have been in private practice. In general my practice from 1981 to 1985 was as a prosecutor, civil litigator and regulator; from 1985 to 1989 as a litigator, litigation supervisor, legal advisor and policy maker; from 1989 to 1993 as a litigation supervisor, government administrator, legal advisor and crisis manager; from 1993 to 1997 as a policy maker, legal advisor litigation supervisor and government administrator; and from 1997-2001 as a litigator and legal advisor on litigation strategy and regulatory matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From 1981 through 1997 my clients included, for example, the United States, the State of New Hampshire and four New Hampshire governors. Since 1997 my clients have tended to be mid to large sized companies and have ranged from some of the world's largest corporations to an older employee with a grievance against a municipality.

I have specialized at times in fraud investigation and prosecution, criminal law, antitrust, securities, state election law, administrative law, appellate practice, legislation and executive branch process.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

The most accurate answer is occasionally, with the frequency varying. From 1981 to 1985 I appeared regularly, perhaps 20 or more times per year; from 1985 to 1997 I appeared with decreasing frequency, appearing only rarely from 1993-97; from 1997-2001 I have appeared in court approximately 5-10 times per year.

2. What percentage of these appearances was in:

- (a) federal courts; 30%
- (b) state courts of record; 70%
- (c) other courts. 0%

3. What percentage of your litigation was:

- (a) civil; 65%
- (b) criminal; 35%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

To verdict or judgment - 10  
Sole counsel in 5  
Chief counsel in 3  
Associate counsel in 2

5. What percentage of these trials was:

- (a) jury; 20%
- (b) non-jury 80%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As Attorney General of New Hampshire and United States Attorney for the District of New Hampshire I was personally involved in thousands of litigated matters, including CCE and RICO matters, dozens of homicide prosecutions, hundreds of appeals, multimillion dollar tax cases and defense of sweeping challenges

to government programs and institutional practices. The extent of my personal involvement varied depending on the exigencies of the matter. I have described some below in response to #19. For purposes of this question, I have included only matters in which I was required to personally appear regularly in court, as opposed to managing the litigation or litigation that required few court appearances.

1. Opinion of the Justices, 129 N.H. 714 (1987) I was lead counsel for the executive branch of New Hampshire in this separation of powers case under the New Hampshire Constitution, involving prior legislative approval of state contracts. In a case of first impression, the legislature had enacted laws granting itself final authority over computer and other data processing contracts. I prepared, litigated and briefed the case before the New Hampshire Supreme Court, successfully arguing that contracting is an executive function.

(a) 8/87 - 10/87

(b) New Hampshire Supreme Court  
Chief Justice Brock and Associate Justices  
Batchelder, Souter, Johnson and Thayer.

(c) Co-counsel:

Hon. Bruce E. Mohl  
Superior Court Center  
99 N. State Street  
Concord, NH 03301 (603) 271-2030

Opposing Counsel:

Donald J. Pfundstein, Esquire  
Gallagher, Callahan & Gartrell  
214 North Main Street  
Concord, NH 03301 (800) 528-1181

2. Chretien v. Sununu, 86-E-279  
I was sole counsel representing the defendant Governor, Attorney General and legislative leaders in this action which sought to overturn recently enacted tort reform laws. Substantive constitutional and procedural statutory challenges were made, including alleged violations of the state's open meetings law. The court granted my comprehensive motion to dismiss after a lengthy hearing.

(a) 5/86 - 2/87

(b) Merrimack County, New Hampshire Superior Court  
Justice George S. Pappagianis

(c) Opposing Counsel:

Jack Middleton, Esquire  
McLane, Graf, Raulerson & Middleton  
900 Elm Street  
Manchester, NH 03105 (603) 625-6464

3. State v. David Williams, 85-E-181

I was lead counsel representing the plaintiff State of New Hampshire in this civil securities fraud action. With over 400 victims, the case was considered at that time to be the most extensive of its kind ever brought in New Hampshire. I successfully alleged numerous complex violations of state securities laws as well as unfair and deceptive trade practices. I was able to compel the appointment and the entry of a permanent injunction. I later supervised the successful criminal prosecution of the principal.

(a) 4/85 - 9/85

(b) Hillsborough County, New Hampshire Superior Court  
Justice Arthur Bean

(c) Co-counsel

Charles W. Grau, Esq.  
Upton, Sanders & Smith  
10 Centre Street  
Concord, NH 03301  
(603) 224-7791

Opposing Counsel

Loren H. Rossen, Jr., Esq.  
28 Charron Street  
Nashua, NH 03060  
(603) 882-8168

Other Party (Receiver)

J. Michael Deasy, Esq. (now U.S. Bankruptcy Judge)  
275 Chestnut Street  
Manchester, NH 03101  
(603) 666-7424

4. Hickey v. State, 85-C-635

I was lead counsel for the government defendants in this negligence action brought against the State Hospital, involving allegations of improper treatment and release, resulting in the patient committing a homicide. The claims also included a Tarasoff breach of the duty to warn count, among others. The original ad damnum was \$1,000,000. After successfully obtaining the dismissal of various counts and after extensive discovery, I was able to compromise the action for \$49,000.

(a) 1985 - 8/88

(b) Merrimack County, New Hampshire Superior Court  
Justices Joseph A. DiClerico, Jr. and William F. Cann

(c) Co-counsel

Peter T. Foley, Esq.  
6 Columbus Avenue, Concord, NH 03301  
(603) 224-6368

Opposing Counsel

Charles Douglas, Esq.  
6 Loudon Road, Concord, NH 03301  
(603) 224-1988

5. State v. R.R.B., Inc., E-84-496

I was sole counsel for the State of New Hampshire in this action in which I alleged numerous unfair and deceptive trade practices by a retail furniture chain. These practices included the retailers advertising, its failure to deliver product and its withholding of customer deposits. I investigated, drafted and filed the complaint, conducted discovery and obtained an injunction. In the resulting bankruptcy proceeding as State counsel I represented the interests of consumers, who were ultimately made whole despite the company's liquidation.

(a) 1984

(b) Hillsborough County, New Hampshire Superior Court  
Justices William F. Cann and Linda Dalianis

(c) Opposing Counsel

Richard Gellerman, Esq.  
220 Boylston Street  
Chestnut Hill, MA 02167  
(617) 969-7558

6. State v. William Hicks, 83-858, 83-859

I was the sole prosecutor in this criminal prosecution of the owner of a large automobile dealership for falsification of official documents in an alleged odometer tampering scheme. The cases ultimately resulted in guilty pleas.

(a) 1983

(b) Salem, New Hampshire District Court  
Justices Robert Marshall and Urville Beaumont

(c) Opposing Counsel

Frank V. Hekimian, Esq.  
51 Main Street  
Salem, NH 03079  
(603) 893-4336

7. State v. John Kelly, 125 N.H. 484

I was lead counsel in this criminal prosecution for theft by deception. The defendant automobile dealer was charged in an alleged odometer roll back scheme and was found guilty after a jury trial. The conviction was overturned on appeal by a divided court, which ruled in a three to two opinion that the theft statute could not be applied to the commercial situation giving rise to the prosecution.

(a) 1983

(b) Hillsborough County, New Hampshire Superior Court  
Justice Frederick Goode

New Hampshire Supreme Court  
Chief Justice Brock and Associate Justices Douglas,  
Batchelder, Souter and Johnson

(c) Co-counsel

Gregory W. Swope, Esq.  
58 Pleasant Street  
Concord, NH 03301  
(603) 223-0847

Opposing Counsel

Richard Walsh, Esq.  
282 River Road  
Manchester, NH 03104  
(603) 623-9300

8. State v. Fitzgerald-Hicks Dodge Toyota, E-186-82

I was co-counsel and later sole counsel representing the state of new Hampshire in this case brought by the State alleging numerous unfair and deceptive trade practices by a substantial automobile dealer. The case was eventually settled with the dealership ceasing business operations. I participated in the investigation, drafting of the complaint and discovery, and I negotiated the ultimate disposition.

(a) 1982 - 83

(b) Rockingham County, New Hampshire Superior Court  
No Assigned Judge

(c) Co-counsel

Anne C. Clarke, Esq.  
1 Harbor place  
Portsmouth, NH 03801  
(603) 431-8886

Opposing Counsel

Frank V. Hekimian, Esq.  
51 Main Street  
Salem, NH 03079  
(603) 893-4336

9. State v. Subaru of America, 81-E-318

I was co-counsel and later sole counsel for the State of New Hampshire in this action brought against a major automobile importer, alleging deception in the marketing and service of automobiles manufactured in a three year period. I participated

in the drafting of the complaint, motions practice, discovery and in settlement negotiations, and I ultimately obtained a consent decree on behalf of the State.

(a) 1981 - 82

(b) Merrimack County, New Hampshire Superior Court  
No Assigned Judge

(c) Co-counsel

Edward E. Lawson, Jr., Esq.  
67 Water Street  
Laconia, NH 03246  
(603) 528-2900

Opposing Counsel

Norman Knopf, Esquire  
Collier, Shannon, Rill & Scott  
1055 Thomas Jefferson Street, N.W.  
Washington, DC 20007  
(202) 342-8400

10. Linlee Enterprises v. State, 122 N.H. 455  
I represented the defendant State of New Hampshire in this action brought by a national heating unit distributor to enjoin the enforcement of a statute prohibiting certain types of heating units. After evidentiary and motion hearings, an injunction was issued that was sustained on appeal. I was co-counsel at the trial level and sole counsel on appeal.

(a) 1981 - 82

(b) Grafton County, New Hampshire Superior Court  
Justice William Johnson

New Hampshire Supreme Court  
Chief Justice King and Associate Justices Bois,  
Brock, Douglas and Batchelder

(c) Co-counsel

Anne C. Clarke, Esq.  
1 Harbor Place  
Portsmouth, NH 03801  
(603) 431-8886



Opposing Counsel

Hon. Harold Perkins  
Superior Court Center  
99 North State Street  
Concord, NH 03301  
(603) 271-2030

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation. In this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

As a former United States Attorney, Principal Associate Deputy Attorney General, and State Attorney General, among other positions, I have had overall supervisory, responsibility for thousands of criminal, civil, administrative, legislative and legal policy matters. My duties have ranged, for example, from supervising other U.S. Attorneys, United States Department of Justice components and the national asset forfeiture program, to conducting homicide investigations, advising governors, legislators and dozens of other government officials, prosecuting securities violations on behalf of small investors and initiating, editing and putting into practice one of the nation's first effective comprehensive statewide interdisciplinary protocols to combat domestic violence.

Four of the more significant matters in which I have participated are:

First, in private practice, from 1997 through 1999 one of my clients was an energy company seeking to alleviate New England's reliance on other fossil fuels by siting an offshore pipeline to bring natural gas from Sable Island Nova Scotia to New Hampshire. A part of the strategy was to utilize an abandoned nuclear power facility for cogeneration. I was responsible for all proceedings in New Hampshire. This representation required that I learn the science, technology and law of undersea pipelines, including pressure, materials, topography, oceanography marine fisheries and other wildlife issues. I also became schooled in landfill and overland technology issues.

as New Hampshire's Attorney General, I was able in 1993 to forge an agreement for effective, fair application of New Hampshire's state asset forfeiture provisions. At that time also working on the question of the appropriate role of asset forfeiture in law enforcement was Democratic State Representative Peter Burling. Representative Burling, who is now the Minority Leader of the New Hampshire House of Representatives, and I came to a meeting of the minds on this issue. In part because he had that experience in his dealings with me, he has supported my nomination to the instant position.

Fourth, while serving as United States Attorney for the District of New Hampshire, it came to my attention that members of a Massachusetts based chapter of the Hells Angels motorcycle club were thought to be engaging in this District in numerous acts of violence, as well violations of controlled substance laws. I obtained the agreement of several Federal, state and local law enforcement agencies to commit to a coordinated investigative and prosecutive effort against the violators.

After an intensive multi jurisdictional investigation, several members were prosecuted before an anonymous jury and received substantial terms of incarceration. As with any complex, intensive, time consuming law enforcement operation, there were several disagreements, administrative obstacles and problems of proof in this three year effort. It was an honor to be in a position to resolve each of those difficulties and to provide leadership and support to the very capable investigators and prosecutors.

Additional significant legal activities have included the following.

In private practice I represented a large nonprofit health insurer in an effort to purchase and prevent the insolvency of New Hampshire's largest health insurer.

I also represented a company facing a \$20 million negligence and fraud claim that was settled at a cost of \$400,000 to the client. I acted as outside general counsel overseeing the litigation team and negotiating the settlement terms.

I have had several securities related clients, ranging from a corporate officer accused of insider trading, to an adviser accused of registration violations, to brokers successfully seeking to change firms.

As a state Attorney General I negotiated the important terms of settlement of a complex matter before the United States Supreme Court in which the other New England States had challenged New Hampshire's method of taxing utility owners of a nuclear generating facility.

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As United States Attorney I coordinated the cooperative federal, state and local investigations and prosecutions of New Hampshire's most notorious organized crime figure, Continuing Criminal Enterprise and RICO prosecutions, as well as several bank fraud prosecutions.

I supervised and actively participated in the legal negotiations for the purchase of over 45,000 acres of land by the State of New Hampshire for conservation purposes. This included research and negotiation of complex funding questions, state authority issues, title problems and federal participation.

I negotiated the legal aspects of a potential breach of contract and warranty claim the State of New Hampshire had in relation to a multimillion dollar computer system. This resulted in the State receiving a new, enhanced computer system.

Finally, I negotiated settlement of an old age assistance reimbursement suit that had been outstanding between the State of New Hampshire and one of its counties for six years. This settlement resulted in the award of more than three million dollars to my client.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have \$6,281 in a tax deferred compensation account as a result of prior employment with a law firm. I anticipate receiving the funds upon my retirement.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the appropriate Judicial Canons and rules governing conflicts of interest. In general, I propose to keep a public list of known potential conflicts, and to recuse myself whenever a conflict appears. Litigation involving my prior firm, clients I represented in private practice and matters which I participated in as a government attorney are likely to pose initial potential conflict issues.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted herein)

See Attached Form AO10.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an unsuccessful candidate for the Republican nomination for governor of New Hampshire in 2000. My announcement of candidacy was June 14, 2000 and the primary election was September 12, 2000.

From September 14, 2000 to November 7, 2000 I was co-chair of the Gordon Humphrey for Governor campaign as well as the Charles Bass Congressional re-election campaign.

From May, 1999 to November, 2000 I was legal counsel to the Bush for President campaign in New Hampshire. I was a member of the New Hampshire Bush for President steering and finance committees. I headed Lawyers for Bush in New Hampshire.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility call's for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a prosecutor, I came to believe in the existence of the "cycle of violence" spawned by domestic abuse; consequently, I have devoted much time, energy and money over the past decade to this issue. I am widely recognized as a leader in my state's efforts against domestic violence. My activities have included the development of interdisciplinary domestic violence protocols, training over 1500 police officers, health care professionals and social workers, drafting and securing passage of legislation, and making numerous speeches. In the past ten years I have devoted at least a full year's time to these efforts.

In addition, I sponsor and participate in fundraisers for domestic violence programs. Finally, and most significantly, I counsel victims of domestic abuse. I have devoted hundreds of hours to this pursuit.

Like most Americans, I contribute to and participate in events for numerous charitable organizations.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not, and I have not, belonged to such an organization.

Similarly, a party to a case must have a sufficient tangible interest in the outcome of the case to have standing. Moreover, a matter that is no longer in controversy between the parties but rather is moot, should not be decided as a gratuitous exercise by the court. Additionally, pursuant to federalism principles, federal courts should abstain from interference in the development of state law.

Proper interpretation and application of the law requires that courts should not seek to venture beyond the text of legislation but should instead respect the will of the Congress, as expressed in the language of the statute at issue. Finally, cases should be decided based upon the doctrine of *stare decisis* and fidelity to precedent, in order to avoid undue upheaval in the fabric of society as well as to engender greater respect for the law and the judiciary.



AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Howard, Jeffrey R.	<b>2. Court or Organization</b> Court of Appeals, 1st Cir.	<b>3. Date of Report</b> 08/05/2001
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge Nominee	<b>5. Report Type (check type)</b> X Nomination, Date 08/02/2001 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/2000 to 08/05/2001
<b>7. Chambers or Office Address</b> 11 Hensmith Road Salisbury, NH 03268	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner (01/99-05/00)	Choate, Hall & Stewart
2 Of Counsel (05/00-01/01)	Choate, Hall & Stewart
3 President (01/00-08/01)	Jeffrey R. Howard, P.C.

**AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 04/01/98	Tax Deferred Savings With Former Law Firm
2	
3	

**I. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 1999	Choate, Hall & Stewart law practice compensation	241,118
2 2000	Choate, Hall & Stewart law practice compensation	132,708
3 2001	law and consulting practice compensation	47,750
4		
5		

<b>FINANCIAL DISCLOSURE REPORT</b>	Howard, Jeffrey R.	08/05/2001
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**7. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

<input type="checkbox"/> <b>SOURCE</b> <b>NONE</b> (No such reportable reimbursements.)	<b>DESCRIPTION</b>
<b>EXEMPT</b>	

**8. GIFTS**  
*Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

<input type="checkbox"/> <b>SOURCE</b> <b>NONE</b> (No such reportable gifts.)	<b>DESCRIPTION</b>	<b>VALUE</b>
<b>EXEMPT</b>		

**9. LIABILITIES**  
*Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

<input type="checkbox"/> <b>CREDITOR</b> <b>NONE</b> (No reportable liabilities.)	<b>DESCRIPTION</b>	<b>VALUE CODE*</b>
<b>NONE</b>		

\*L CODES: L=\$15,000 or less    R=\$15,001-\$50,000    L=\$50,001 to \$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more

## FINANCIAL DISCLOSURE REPORT

Howard, Jeffrey R.

08/05/2001

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**7II. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions**

A. Description of Assets (including trust assets)  
 B. Income during reporting period  
 C. Gross value at end of reporting period  
 D. Transactions during reporting period  
 E. If not exempt from disclosure

(1) Amount Code (A-H)  
 (2) Type (e.g., dividend, rent or interest)  
 (1) Value Code (J-P)  
 (2) Value Method Code (Q-W)  
 (1) Type (e.g., buy, sell, partial sale, merger, redemption)  
 (2) Date: Month-Day  
 (3) Value Code (J-P)  
 (4) Gain Code (A-H)  
 (5) Identity of buyer/seller (if private transaction)

NONE (No reportable income/assets, or transactions.)

1	NH Fed Credit Union Account	A	Interest	J	T	EXEMPT				
2	USG Equitable IRA	F	Distribut ion	J	T	EXEMPT				
3	Vanguard 500	E	Distribut ion	J	T	EXEMPT				
4	Disney common	A	None	J	T	EXEMPT				
5	Sequenom common	A	None	J	T	EXEMPT				
6	Buy.com common	A	None	J	T	EXEMPT				
7	QEDI common	A	None	J	T	EXEMPT				
8	Cabletron common	A	None	J	T	EXEMPT				
9	Raytheon A common	A	None	J	T	EXEMPT				
10	Biogen	A	None	J	T	EXEMPT				
11	Emerge Interactive common	A	None	J	T	EXEMPT				
12	Talisman common	A	None	J	T	EXEMPT				
13	Worldquest common	A	None	J	T	EXEMPT				
14	Exodus Comm. common	A	None	J	T	EXEMPT				
15	sale of land	C	None	J	T	EXEMPT				
16										
17										

to/Gain Codes: A=\$1,000 or less  
 xl B1, D4) F=\$50,001-\$100,000  
 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 HD=\$5,000,001 or more E=\$15,001-\$50,000  
 al Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 xl C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more  
 al Mtd Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Mark  
 sl C2) U=Book Value V=Other W=Estimated X=Estimated

FINANCIAL DISCLOSURE REPORT	Howard, Jeffrey R.	08/05/2001
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## II. ADDITIONAL INFORMATION OR EXPLANATIONS.

*(Indicate part of report.)*

FINANCIAL DISCLOSURE REPORT	Howard, Jeffrey R.	08/05/2001
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## V. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. App. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

*Jeffrey R. Howard*

Date

*8-5-01*

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

### FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	17	000	---	Notes payable to banks--secured	10	100	---
U.S. Government securities--add schedule				Notes payable to banks--unsecured	4	500	---
Listed securities--add schedule	7	124	---	Notes payable to relatives	15	000	---
Unlisted securities--add schedule				Notes payable to others	5	100	---
Accounts and notes receivable:	76	000	---	Accounts and bills due	2	400	---
Due from relatives and friends				Unpaid income tax			
Due from others	76	000	---	Other unpaid tax and interest			
Doubtful	36	000	---	Real estate mortgages payable--add schedule	160	627	---
Real estate owned--add schedule	285	000	---	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts--itemize:			
Autom and other personal property	55	000	---				
Cash value--life insurance							
Other assets--itemize:							
				Total Liabilities	197	727	---
				Net Worth	242	397	---
Total Assets	440	124	---	Total Liabilities and net worth	440	124	---
CONTINGENT LIABILITIES	None			GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule.)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

742

Listed Securities:

Vanguard 500	6,281
Disney	289
Sequenom	14
	<hr/>
	7,124

Real Estate Owned:

Residence in Salisbury, NH	
House, Garage on 1.69 A.	285,000

Real Mortgages Payable

On Residence	
Bank of America	160,627

Senator KOHL. We thank you, Mr. Howard.  
Mr. Anderson?

**STATEMENT OF PERCY ANDERSON, NOMINEE TO BE DISTRICT  
JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Mr. ANDERSON. Thank you, Mr. Chairman, for affording me this hearing today, and I would also like to thank your colleagues for the opportunity.

I would like to introduce my brother who is here today, Jerry Anderson; his son, Caulin Anderson; his aunt, Vivian Murphy, and her daughter, Tanya Murphy. Also here today is the Chief Judge of our court, the Honorable Consuelo B. Marshall, and the Clerk of our court, Sherry Carter.

[The biographical information of Mr. Anderson follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Percy Anderson
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge for the Central District of California
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Sonnenschein Nath & Rosenthal  
601 South Figueroa Street, Suite 1500  
Los Angeles, California 90017  
(213) 623-9300
4. **Birthplace:** State date and place of birth.  
  
7-31-48  
Long Beach, California
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Single
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  

UCLA School of Law	1972 - 1975	Juris Doctorate June 1975
UCLA	1966 - 1970	A. B. Sociology June 1970
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation



from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

<u>FROM</u>	<u>TO</u>	<u>NAME OF EMPLOYER</u>	<u>ADDRESS</u>	<u>JOB TITLE</u>
03/96	Present	Sonnenschein Nath & Rosenthal	601 So. Figueroa St. Suite 1500 Los Angeles, California	Partner
01/00	Present	Los Angeles Legal Aid Foundation	1102 Crenshaw Boulevard Los Angeles, California	Member Board of Directors
09/85	03/96	Bryan Cave LLP	333 South Grand Avenue Los Angeles, California	Partner
04/96	04/99	Western Center on Law and Poverty	3701 Wilshire Boulevard Los Angeles, California	Member Board of Directors
06/79	06/85	United States Attorney's Office	312 N. Spring Street Los Angeles, California	Assistant U.S. Attorney
12/78	06/79	Legal Services Corporation	733 Fifteenth Street Washington D.C.	Consultant
09/75	12/78	San Fernando Valley Neighborhood Legal Services, Inc.	13327 Van Nuys Boulevard Pacoima, California	Directing Attorney
09/77	06/78	UCLA School of Law	405 Hilgard Avenue Los Angeles, California	Lecturer at Law
06/72	09/72	State Department of Finance	1013 P. Street Sacramento, California	Auditor
09/70	06/72	UCLA Office of Housing	405 Hilgard Avenue Los Angeles, California	Assistant Dean
09/69	09/70	UCLA Office of Housing	405 Hilgard Avenue Los Angeles, California	House Advisor

All of these positions were paid.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

None

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Los Angeles County Bar Association  
January 1986 to Present

Judicial Evaluation Committee  
September 1991 to September 1992

Executive Committee of the Litigation Section  
June 2000 to Present

American Bar Association  
January 1986 to Present

U.S. Magistrate Merit Selection Panel  
January 1998 to Present

U.S. District Court Disciplinary Committee  
June 1997 to December 2001

Lawyer Representative to the Ninth Circuit Judicial Conference  
December 2001 to Present

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court - 1988

United States Court of Appeals  
for the Ninth Circuit - 1980

United States District Court  
for the Southern District of California - 1986

United States District Court  
for the Central District of California - 1977

United States District Court  
for the Northern District of California - 1991

United States District Court  
for the Eastern District of Michigan - 1996

Supreme Court of California - 1975

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

None

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent. January 3, 2002

16. **Citations:** If you are or have been a judge, provide:
- (a) a short summary and citations for the ten (10) most significant opinions you have written;
  - (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
  - (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not Applicable

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

In 1992, I was nominated by President George Bush to serve as a United States District Judge for the Central District of California, but did not receive a Senate confirmation hearing.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;  
  
Not Applicable
  - (2) whether you practiced alone, and if so, the addresses and dates;  
  
Not Applicable
  - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

03/96	Present	Sonnenschein Nath Rosenthal 601 South Figueroa Street, Suite 1500 Los Angeles, California 90017	Partner
09/85	03/96	Bryan Cave LLP 777 South Figueroa Street, Suite 2700 Los Angeles, California 90017	Partner
06/79	06/85	United States Attorneys' Office 1200 United States Courthouse 312 N. Spring Street Los Angeles, California 90012	Assistant U.S. Attorney
09/75	12/78	San Fernando Valley Neighborhood Legal Services, Inc. 13327 Van Nuys Boulevard Pacoima, California 91331	Directing Attorney

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

I am currently a partner in the Los Angeles office of Sonnenschein Nath & Rosenthal. The Firm has more than 450 lawyers in major cities throughout the United States and in London. Our clients include The Boeing Company, McDonald's Corporation, The Travelers Insurance Company, Allstate Insurance Company, McDonnell Douglas Corporation, Metro-Goldwyn-Mayer Inc., Sara Lee Corporation, Champion Products, Inc. as well as privately held companies and individuals in a wide variety of business and intellectual property litigation. I specialize in trial and appellate litigation, including commercial, intellectual property, products liability, false claims and white collar criminal defense.

Prior to joining Sonnenschein Nath & Rosenthal in 1996, I was a partner with Bryan Cave LLP. The Firm has offices in St. Louis, Washington, D.C., New York, Phoenix, Kansas City, Santa Monica, Orange County, Frankfurt, London, and Saudi Arabia. The firm has over three hundred lawyers and represents a wide variety of business, financial, institutional and individual clients. Clients included McDonnell Douglas Corporation, Emerson Electric Company, Anheuser-Busch Companies, Inc., as well as mid-sized businesses, privately held companies and partnerships. My area of specialization included white collar criminal defense and aviation litigation, particularly products liability. I started with the firm on September 7, 1985.

Prior to joining the Bryan Cave LLP in September of 1985, I was an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office in Los Angeles, California, where I served as the First Assistant Division Chief. I supervised seven supervisory Assistant

United States Attorneys and managed the operations of the criminal division in the absence of the Chief of the division. During my six-year tenure in the office, I specialized in federal criminal litigation, including trial and appellate practice before the United States District Court for the Central District of California and the Ninth Circuit Court of Appeals.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

See Previous Answer

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appear in court regularly.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;
- (B) state courts of record;
- (C) other courts.

Except for this past year, 60-65% of my appearances were in federal court. During the past year, 70% of my appearances were in have been in state court.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
- (B) criminal proceedings.

In the past fifteen years, 80% of my litigation practice involved civil litigation. Prior to that period, my litigation practice was almost exclusively federal criminal litigation.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

30 - 40. In most of these cases I was sole counsel and in one was the principal trial counsel. In two of the cases I was associate counsel.

- (5) Indicate the percentage of these trials that were decided by a jury.

70% - 75%

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

Lead counsel for plaintiff in a civil RICO action following the defendant's conviction for criminal fraud. Defendant moved to dismiss the action on the grounds of forum non conveniens and that an extradited person is immune from civil process. The district court denied the motion and the defendant appealed. The Ninth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. The United States Supreme Court granted certiorari. Mr. Justice Marshall, writing for a unanimous court, held that "neither an order denying a motion to dismiss on grounds that an extradited person is immune from civil process, nor an order denying a motion to dismiss on the ground of forum non conveniens, is a collateral order subject to appeal as a final judgment under 28 U.S.C. § 1291." Van Cauwenberghe v. Biard, 486 U.S. 517, 530 (1988). This opinion resolved a split of authority in the circuits on whether an order denying a motion for forum non conveniens is immediately appealable.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

From 1975 to December 1978, I served as a Directing Attorney and Staff Attorney with San Fernando Valley Neighborhood Legal Services, Inc. I represented low-income clients in all phases of complex civil litigation involving poverty law issues in state and federal court at the trial and appellate levels. My practice included depositions, written interrogatories, motion practice, and non-jury trials. I also assisted less experienced attorneys in trial preparation and courtroom presentation in numerous matters heard in Los Angeles Superior Court and Municipal Court. Although I was paid for this work, the corporation's primary goal was to provide equal access to the civil justice system for disadvantaged and low income residents of the San Fernando Valley.

From 1996 to 1999, I served as a State Bar of California representative on the Board of Directors of Western Center on Law and Poverty, Inc. The Western Center was founded in 1967 as a nonprofit corporation to provide litigation support to community legal services programs throughout the State of California. The Center is located at 3535 West Sixth Street, Los Angeles, California. I estimate that I spent 4-6 hours per month.

In April 1991, in the wake of the Rodney King incident, I was appointed as one of ten deputy general counsel to the Independent Commission on the Los Angeles Police Department. The Commission conducted an unprecedented inquiry into the use of excessive force by the Los Angeles Police Department. I estimate that I spent 15-20 hours per week.

I currently serve as a State Bar of California representative on the Board of Directors of the Los Angeles Legal Aid Foundation. The Foundation provides legal services to the indigent. The Foundation is located at 1102 Crenshaw Boulevard, Los Angeles, California. I estimate that I spend four hours per month.

2. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. PMC, Inc. and Winkler Forming, Inc. v. Paul Winkler, et al.  
Case No. BC 193482  
Los Angeles County Superior Court

This action was filed on June 30, 1998 against Paul Winkler and six other former employees of Winkler Forming, Inc. ("WFI"), who left WFI and went to work for another competing company, Paul Winkler Plastics Corp. ("Winkler Plastics"). Paul Winkler Plastics Corporation was added as a defendant on July 15, 1998. We represented Paul Winkler Plastics Corporation. The Third Amended Complaint, filed on May 17, 1999, alleged misappropriation of trade secrets, unfair competition, breach of fiduciary duty, interference with prospective economic advantage, fraud, trade libel, conversion, breach of implied covenant of good faith and fair dealing, breach of loyalty, breach of confidence and conspiracy. Plaintiffs sought compensatory damages exceeding \$15 million, punitive damages and permanent injunctive relief enjoining defendants from misappropriating or using WFI's allegedly confidential and trade secret information, contacting any of WFI's customers to solicit their business and disparaging WFI or PMC, Inc. to third parties. The



action went to trial on June 26, 2000, resulting in several defense verdicts and a partial mistrial as to the remaining claims because of juror attrition. On October 17, 2000, the Court granted Winkler Plastics' motion for judgment in its favor on the one remaining claim against it. On October 30, 2000, a second trial began on the remaining claims against the remaining defendants. The second trial ended with defense verdicts on all claims.

Judge:

The Honorable Joseph R. Kalin  
Los Angeles County Superior Court

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Troy & Gould  
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2. Metro-Goldwyn-Mayer Inc. v. The Walt Disney Company  
Case No. BC 149799  
Los Angeles County Superior Court

The case principally involved the right to use MGM's name and intellectual property in conjunction with movie theme parks in Europe. We represented MGM. The issue was whether Disney was obligated to reconvey to MGM the rights to use for such parks MGM's name, logos, the past and future MGM/United Artists film library, and other related MGM intellectual property because of Disney's failure to develop a movie studio theme park in

Europe. MGM had licensed its name and logos throughout Europe to Disney exclusively until 2004, and non-exclusively perpetually thereafter. As to the MGM/United Artists films, the license was perpetually exclusive. MGM sued to compel Disney to reconvey all the rights, claiming that Disney had not met a condition subsequent regarding development of a Disney European movie theme park. In addition, MGM claimed that in the Florida Disney/MGM Studio Tour Theme Park at Disney World, Disney underpaid merchandise royalties by approximately \$500,000. The issues on both aspects of the litigation were the correct meanings of ambiguous contract terms and whether, under whatever meanings the jury found to be correct, Disney or MGM had breached their contractual obligations (two days before trial, Disney tendered the full amount claimed by MGM on its Florida royalty claim and dropped its \$1.4 million counterclaim). After a three week jury trial, a 12 person jury unanimously concluded that Disney was obligated to reconvey all the European rights to the MGM name immediately and awarded MGM \$1.5 million in damages because Disney had failed timely to do so.

Judge:

The Honorable S. James Otero  
Los Angeles County Superior Court

Opposing Counsel:

The Honorable Lee Smalley Edmon  
Los Angeles Superior Court  
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Los Angeles, California 90071  
(213) 974-5621

Co-Counsel:

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Bertram Harris Fields, Esq.  
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(310) 553-3610

3. Valerie Giraud, et al. v. HSI Productions, Inc., et al.  
 Case No. BC 248172  
 Los Angeles Superior Court

This Los Angeles Superior Court action arises out of the death of Paul Giraud, who was one of four persons killed in a helicopter accident on June 22, 2000. The accident occurred while Giraud was directing the filming of an automobile commercial near an ice crevasse on the Llewellyn Glacier in northern British Columbia, Canada. Plaintiffs, who are the heirs and personal representative of Giraud's estate and Paul Giraud Productions, Inc., the decedent's wholly owned company, allege the accident was caused, in part, by defendants' negligence in providing an unsafe helicopter and aircrew for filming the commercial, and that defendant HSI Productions, Inc., the company hired to produce the commercial, misrepresented to Giraud that the helicopter and its pilot were able to safely perform the special requirements of the flight, including that an external camera mount be utilized on the aircraft. Mr. Giraud had been hired to direct commercials, including the subject commercial. The defendants include HSI Productions, Inc., the company that had been hired to produce the commercial, TBWA Chiat/Day, Inc., the advertising agency, Omnicom Group, Inc., the parent company of Chiat/Day, Nissan North America, Inc., the manufacturer of the automobile that was the subject of the commercial, and Trans-North Turbo Air Ltd., the owner and operator of the helicopter. Plaintiffs allege four causes of action: wrongful death and survival damages, negligent misrepresentation, negligent performance of contract and breach of contract. I am lead counsel for Nissan North America, Inc., TBWA Chiat/Day, Inc. and its parent company, Omnicom Group, Inc.

Judge:

The Honorable Rodney E. Nelson  
 Los Angeles Superior Court Judge

Opposing Counsel:

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4. United States of America v. Robert J. McKenna, et al.  
 Case No. CV 99-117 DOC (EEx)  
 United States District Court  
 Central District of California

I was lead counsel for a physician in a qui tam action brought under the False Claims Act ("FCA"), 31 U.S.C. §§ 3729-3733. Relator alleges that 17 defendant hospitals and physicians submitted false Medicare claims to the government related to lung volume reduction surgery ("LVRS"), a surgery designed to improve the quality of life for end-stage emphysema patients. Relator contends that defendants' claims for Medicare reimbursement were fraudulent because LVRS allegedly is not a safe or effective procedure, and Medicare only pays for medically "reasonable and necessary" care. She also alleges that the defendants misrepresented to the government and patients the mortality rates with regard to LVRS, falsified death certificates to obscure actual mortality rates, circulated fraudulent studies that contained among other things false mortality data, and submitted false information to the government to obtain federal grants. On February 27, 2001, the Court granted the defendant's motion for summary judgment.

Judge:

The Honorable David O. Carter  
 United States District Judge

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Arthur R. Chenen  
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5. Hyundai Space & Aircraft Company Ltd. v. The Boeing Company, et al.  
 Case No. CV 99-10858 HLH (AIJx)  
 United States District Court  
 Central District of California

I was associate counsel for defendants McDonnell Douglas Corporation (now The Boeing Company) and The Boeing Company in a civil suit brought by Hyundai Space & Aircraft Company, Ltd. ("HYSA") in both California and Korea. The dispute arises out of HYSA's contract with Boeing to manufacture wings for Boeing's new 100-seat 717 aircraft. When Boeing partially terminated the contract, HYSA filed suit in San Francisco and then in Seosan Korea, where HYSA's wing factory is located. Defendants successfully obtained transfer of HYSA's California case from San Francisco to Los Angeles, home of Boeing's 717 program, and then obtained an injunction from the district court in Los Angeles

preventing HYSA from prosecuting its duplicative suit in Korea. The action was subsequently settled.

Judge:

The Honorable Harry L. Hupp  
United States District Judge

Opposing Counsel:

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R. James Slaughter  
McCutchen, Doyle, Brown & Enersen, LLP  
Three Embarcadero Center  
San Francisco, California 94111-4067  
(415) 393-2000

6. David Sharp v. Haight Brown & Bonesteel, et al.  
Case No. CV 98-6225 CAS (CWx).  
United States District Court  
Central District of California

I was lead counsel for the managing partner of a prominent Southern California law firm in a RICO action brought by lawyer who alleged that the defendants engaged in a complex scheme aimed at defeating him in litigation, procuring his disbarment and preventing from obtaining judicial office. Plaintiff contends that the defendants obtained a variety of confidential and private information about him, surveilled him, broke into his law office and burglarized his home. On January 6, 2000, the Court granted the defendants' motion for summary judgment. Defendants successfully argued to the district court that the vast majority of plaintiff's so-called "evidence" was inadmissible and what remained was not probative of plaintiff's claims.

Judge:

The Honorable Christina A. Snyder  
United States District Judge

Opposing Counsel:

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7. Biard v. Van Cauwenberghe  
 Case No. CV 85-7378 JSL  
 United States District Court  
 Central District of California

I was lead counsel for plaintiff in a civil RICO action following the defendant's conviction for criminal fraud. Defendant moved to dismiss the action on the grounds of forum non conveniens and that an extradited person is immune from civil process. The district court denied the motion and the defendant appealed. The Ninth Circuit Court of Appeals dismissed the appeal for lack of jurisdiction. The United States Supreme Court granted certiorari. Mr. Justice Marshall, writing for a unanimous court, held that "neither an order denying a motion to dismiss on grounds that an extradited person is immune from civil process, nor an order denying a motion to dismiss on the ground of forum non conveniens, is a collateral order subject to appeal as a final judgment under 28 U.S.C. § 1291." Van Cauwenberghe v. Biard, 486 U.S. 517, 530 (1988). This opinion resolved a split of authority in the circuits on whether an order denying a motion for forum non conveniens is immediately appealable.

Following the denial of Van Cauwenberghe's motion to dismiss, he declined to enter a general appearance to defend the civil case. The district court granted plaintiff's motion for summary judgment. Van Cauwenberghe then appealed a district court order directing payment of money on deposit in the registry of the Court to plaintiff pursuant to a writ of attachment. The court of appeals found that the doctrine of "fugitive disentitlement" did not bar Van Cauwenberghe's appeal, but he was precluded by the doctrine of res judicata from

collaterally attacking on appeal the district court's personal and subject matter jurisdiction; and the writ of attachment was validly issued and barred his claim to lawful possession of the property on deposit in the registry of the Court. United States v. Van Cauwenberghe, 934 F.2d 1048 (9<sup>th</sup> Cir. 1991).

Judge:

The Honorable J. Spencer Letts  
United States District Judge

Opposing Counsel:

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(202) 514-0626

8. Jamine Mgrdichian v. City of Compton, et al.  
Case No. BC 151658  
Los Angeles Superior Court

In 1995, defendant Jasmine Mgrdichian, a 70 year old widow, who inherited stock in a municipal residential waste contractor, Murcole, Inc., testified for the government in a federal prosecution against United States Congressman Walter Tucker, the City of Compton's former mayor, on charges that Tucker unlawfully extorted payments from Compton contractors. Tucker was convicted and sentenced to prison for extortion. In 1997, the City of Compton then brought an action in Los Angeles Superior Court against Murcole and Mgrdichian for declaratory relief alleging that its contract with Murcole was void because the California Government Code prohibits elected officials from doing business with entities with whom they have an interest. Compton charged that Mgrdichian's extortion payments to Tucker gave him an interest in Murcole. Compton sought \$10,000,000.00 damages. I was lead counsel for defendant Murcole. Shortly before the action was to be



tried to a retired Los Angeles Superior Court Judge sitting without a jury, the City dismissed its case.

Judge:

The Honorable Marvin M. Lager  
Los Angeles Superior Court Judge

The Honorable Lester Olson  
Los Angeles Superior Court Judge (ret.)

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Government Counsel:

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Los Angeles, California 90071  
(213) 337-6777

9. In re Air Disaster Near Cerritos, California on August 31, 1986  
MDL 717 Kn  
United States District Court  
Central District of California

Multi-district litigation arising out of a mid-air collision between a single engine Piper Cherokee and a DC-9 jetliner. A total of 41 lawsuits by the heirs and/or personal

representatives of 63 decedents were consolidated before United States District Judge David V. Kenyon. Acted as lead counsel for the manufacturer of the DC-9 aircraft. The actions against the manufacturer were dismissed following a motion to dismiss based on lack of subject matter jurisdiction and/or following the entry of summary judgment based on lack of causation. The court's ruling on the motion to dismiss reaffirmed the Ninth Circuit view that pendent party jurisdiction is unconstitutional.

Judge:

The Honorable David V. Kenyon  
United States District Judge

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10. Kaye Mounsey, et al. v. Allied Signal, Inc., et al.,  
CV 95-4309 WDK  
United States District Court  
Central District of California

I was lead counsel for McDonnell Douglas Corporation in the "friendly fire" shootdown of two United States Black Hawk UH-60 helicopters by two United States' F-15 aircraft over northern Iraq on April 14, 1994. At the time of the incident, both the Black Hawks and the F-15s were engaged in activities related to Operation Provide Comfort. The plaintiffs are the families and estates of 14 Americans aboard the helicopters. Defendants are the manufacturers of the aircraft and/or transponder systems involved in the incident. According to the Accident Investigation Board, the shootdown was caused by a chain of events including human errors, procedural errors, errors in performance of the air units involved and errors in the operation of the equipment they used. Defendants moved for summary judgment on the ground that the government's invocation of the state secrets privilege (1) precluded plaintiffs from making out a prima facie case of products liability, and (2) prevented defendants from establishing valid affirmative defenses. On April 10, 2001, the Court granted defendants' motion for summary judgment.

Judge:

The Honorable William D. Keller  
United States District Court Judge

Opposing Counsel:

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 John Conner  
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 Washington, D.C. 20005  
 (202) 616-4000

11. United States v. Cavanagh  
 CR 84-1183(A) WMB  
 United States District Court  
 Central District of California

I was lead counsel in a federal espionage prosecution for attempting to deliver highly classified defense information to the Union of Soviet Socialist Republics. Pursuant to a wiretap authorized under Foreign Intelligence Surveillance Act of 1978 (FISA), government agents intercepted a telephone conversation in which Cavanagh offered to sell defense secrets to representatives of the Soviet Union. FBI agents posing as Soviet agents arranged to meet with Cavanagh, and he delivered certain classified documents to them. Cavanagh was indicted for attempting to deliver defense information to a foreign government. He moved to suppress the fruits of the electronic surveillance; the district court denied the motion; and

Cavanagh entered a conditional guilty plea under Rule 11(a)(2) of the Federal Rules of Criminal Procedure. He appealed the district court's denial of the motion to suppress. In a question of first impression in the Ninth Circuit, the court of appeals concluded that the surveillance satisfied the statutory requirements for issuance of a warrant and the procedures established by the Act were consistent with the United States Constitution. United States v. Cavanagh, 807 F.2d 787 (9th Cir. 1987).

Judge:

The Honorable William Matthew Byrne, Jr.  
United States District Judge

Opposing Counsel:

Manual U.A. Araujo  
3440 Wilshire Boulevard, Suite 1007  
Los Angeles, California 90010  
(213) 389-9271

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

No, I have never been sued directly by a client. However, in February 1987, Mrs. Virginia A. Stentz Williams and her children, all heirs of Alma Ida Stentz, filed suit in the Circuit Court of St. Louis County against Bryan, Cave, McPheeters & McRoberts and all of its named Partners, individually, alleging claims of professional negligence and breach of contract. In Missouri, a plaintiff cannot collect against a partnership unless he or she has named each individual partner (I was not directly or indirectly involved in the transaction which gave rise to the lawsuit.) The matter arose out of a lawsuit filed earlier in which plaintiffs contested the Will of Alma Ida Stentz which was prepared by the Firm. Plaintiffs claimed Mrs. Stentz was not of sound mind when she signed the Will and was misinformed as to the content of the Will in that it did not exercise a power of appointment which she had exercised in prior wills. The alleged effect of the omission was to cause plaintiffs to lose a

pre-tax inheritance of approximately \$500,000. Mrs. Stentz, however, was clearly competent to exercise her Will and she expressly determined not to exercise the power of appointment because, among other reasons, she had already given the plaintiffs substantial sums during her lifetime. The Will thus bequeathed her property as she had requested. The trial court dismissed the action and the dismissal has been affirmed on appeal.

On February 25, 1998, a legal malpractice case was filed against Sonnenschein Nath & Rosenthal and several current and former partners and associates in the Circuit Court for the City of St. Louis. On December 11, plaintiffs were granted leave to file a first amended complaint which adds as defendants all individuals, including myself, who were equity partners in the Firm during the period from January 1, 1993 through June 11, 1997, even though they had no involvement in the underlying representation that gave rise to the action. Plaintiffs added these additional defendants because, under Missouri law, a general partnership such as the Firm is not a legal entity capable of being sued. Thus, plaintiffs have added all individuals who were equity partners during the relevant time period in order to protect plaintiffs' right to recovery.

Plaintiffs are a closely-held corporation, Madison Metal Services, Inc. and two of three individuals who were owners of the corporation, Charles Adams and James V. Murphy. The Firm defended them in a suit brought by the other owner, Edwin S. Gibson, in the Circuit Court of St. Louis County (I was not directly or indirectly involved in the action which gave rise to the lawsuit.). Gibson claimed that Murphy and Adams had breached their fiduciary duties to him and tortuously interfered with Madison Metal Services' contractual obligation to repurchase his stock. The suit resulted in a judgment for Gibson of approximately \$1,100,000 which was then affirmed on appeal. In their first amended complaint plaintiffs assert claims for negligence and breach of fiduciary duty based upon the Firm's conduct of the case at the pretrial and trial stages and on appeal. The complaint includes a claim for unspecified exemplary damages and pre-judgment interest, as well as unspecified actual damages and costs. I understand that the action was settled for a nominal amount.

Although more than 10 years ago, in late 1986 or late 1987, I was informed by my automobile insurance carrier that I had been named as a defendant in either a Los Angeles Municipal or Superior Court action for personal injuries as a result of a minor traffic accident for which I was not at fault. My insurance carrier handled the matter and I was informed that it was settled for a nominal amount.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

Consistent with the Canons of Judicial Ethics, the Local Rules of Practice for the United States District Court for the Central District of California, orders of the court, 28 U.S.C. § 455, and applicable case authority, I would recuse myself in any proceeding in which my

impartiality might reasonably be questioned. To evaluate possible disqualification or recusal, I would review the Notice of Interested Parties that is filed with each complaint to determine which persons, firms, partnerships and corporations (including parent corporations) have a direct, pecuniary interest in the outcome of the case, including any insurance carrier which may be liable in whole or in part (directly or indirectly) for a judgment that may be entered in the action or for the cost of defense. For an appropriate period of time I will recuse myself in any matters involving the firm of Sonnenschein Nath & Rosenthal or the Los Angeles Legal Aid Foundation on whose board of directors I presently sit. I intend to resign from that position if I am chosen to serve as a United States District Judge. I am unaware of any categories of litigation and/or financial arrangements that are likely to present potential conflicts of interest during my service as a United States District Judge.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

Please see Financial Disclosure Report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

Financial Net Worth Statement attached

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

- (a) If so, did it recommend your nomination?

Yes

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted an application that resembles the Senate Questionnaire to the selection committee. I participated in an interview conducted by a selection committee. I then

participated in an interview with the White House Counsel's Office.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No



AO-19 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Anderson, Percy		2. Court or Organization Central District of California	3. Date of Report 01/28/2002
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee		5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 01/01/2002
7. Chambers or Office Address 601 S. Figueroa Avenue Suite 1500 Los Angeles, California 90017		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions)	

1. Member of Board of Directors	Legal Aid Foundation of Los Angeles
2.	
3.	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	

1. 10/06/95	SNR Partnership Agreement - capital contribution to be returned upon resignation from the partnership
2. 01/01/95	Sonberk Profit Sharing Plan - 401K Plan funds will be rolled over into an individual IRA account upon resignation.
3.	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		

1. 12/01/00	Sonnenschein Nath & Rosenthal Partnership	\$328,000
2. 01/01/02	Sonnenschein Nath & Rosenthal Partnership	\$319,873
3.		
4.		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Anderson, Percy	01/28/2002

**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	EXEMPT.
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	EXEMPT	
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	X NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Anderson, Percy		Date of Report 01/28/2002	
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VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-I)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-I)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 Real Property - Long Beach, CA Parcel 3		None	M	T	EXEMPT				
2 Real Property - Long Beach, CA Parcel 1		None	M	T	EXEMPT				
3 United California Bank		None	M	T	EXEMPT				
4 Bank of America Account	A	Interest	L	T	EXEMPT				
5 Citibank Account	C	Interest	L	T	EXEMPT				
6 Bryan Cave LLP Partnership	A	Interest	J	T	EXEMPT				
7 East West Fed Bank Account	A	Interest	K	T	EXEMPT				
8 Sonnenschein Nath Rosenthal Partnership	A	Interest	K	T	EXEMPT				
9 Tower Investors LLC Account	A	Interest	J	T	EXEMPT				
10 Wells Fargo Bank Accounts	A	Interest	M	T	EXEMPT				
11 Bank of America Inv Svs Account	C	Dividend	L	T	EXEMPT				
12 CNL American Prop Fund	A	Dividend	K	T	EXEMPT				
13 First Clearing Corporation	B	Dividend	K	T	EXEMPT				
14 Tower Investors LLC Account	A	Dividend	J	T	EXEMPT				
15 IRA	B	Dividend	N	T	EXEMPT				
16 Abbott Laboratories					EXEMPT				
17 Amazon Com Inc					EXEMPT				

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 I2=\$5,000,001 or more		B=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Anderson, Percy				Date of Report 01/28/2002			
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(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

**VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions**

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 American International GP					EXEMPT				
19 AOL Time Warner					EXEMPT				
20 BP PLC ADS					EXEMPT				
21 Brazil Fund					EXEMPT				
22 Debt Strat Fund Inc. New					EXEMPT				
23 Dow Chemical Co					EXEMPT				
24 Emerging Mkts Telecomm FD New					EXEMPT				
25 General Electric Co					EXEMPT				
26 Ing Groep NV ADR					EXEMPT				
27 Mexico Fund Inc.					EXEMPT				
28 NFS Charter Income TR SBI					EXEMPT				
29 NFS Multimarket Inc. TR SBI					EXEMPT				
30 Microsoft Corp					EXEMPT				
31 Morgan Stanley Emerg Mkts Fund					EXEMPT				
32 Morgan Stnly Dean Witter & Co					EXEMPT				
33 Palm Inc					EXEMPT				
34 Pilgrim Prime Rate Trust					EXEMPT				

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Anderson, Percy		Date of Report 01/29/2002	
<b>VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions</b> <small>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
					(2) Date: Month- Day
					(3) Value Code (J-P)
					(4) Gain Code (A-H)
					(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)					
35 Putnam Premier Income TR SBI					EXEMPT
36 SBC Communications					EXEMPT
37 Smartserv Online Inc New					EXEMPT
38 Southwest Airlines					EXEMPT
39 Target Corporation					EXEMPT
40 Templeton Emerging Mkts Inc FD					EXEMPT
41 The India Fund Inc.					EXEMPT
42 Veriton Communications					EXEMPT
43 Brokerage Account No. 1					
44 Money Market	B	Dividend	K	T	EXEMPT
45 American International GP	A	Dividend	J	T	EXEMPT
46 AOL Time Warner		None	K	T	EXEMPT
47 BP PLC ADS	A	Dividend	J	T	EXEMPT
48 Dow Chemical Co	A	Dividend	J	T	EXEMPT
49 Dreyfus Strategic Mun Bd Fd	A	Dividend	J	T	EXEMPT
50 Dreyfus Strategic Muns Inc		None	J	T	EXEMPT
51 Duke Realty Corp	A	Dividend	J	T	EXEMPT
<b>1</b> Ino/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Anderson, Percy		Date of Report 01/28/2002	
<b>VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: Month- Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					
52 General Electric Co	A	Dividend	K	T	EXEMPT
53 Microsoft Corp		None	K	T	EXEMPT
54 Munienhanced FD	A	Dividend	J	T	EXEMPT
55 Muninvest FD II Inc	A	Dividend	J	T	EXEMPT
56 Nuveen Municipal Value FD Inc		None	J	T	EXEMPT
57 Nuveen Premium Inc Mun FD Inc		None	J	T	EXEMPT
58 SBC Communications	A	Dividend	J	T	EXEMPT
59 Sprint PCS Series 1		None	K	T	EXEMPT
60 Target Corporation		None	J	T	EXEMPT
61 Verizon Communications	A	Dividend	J	T	EXEMPT
62 Brokerage Account No. 2					
63 Bank Deposit Program	A	Interest	M	T	EXEMPT
64 Money Funds	A	Interest	L	T	EXEMPT
65 AOL Time Warner Inc		None	J	T	EXEMPT
66 ALLTEL Corp Delaware	A	Dividend	J	T	EXEMPT
67 AMGEN Inc		None	K	T	EXEMPT
68 Ariba Inc		None	J	T	EXEMPT
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Anderson, Percy		Date of Report 01/28/2002	
<b>VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					
69 Avaya Inc		None	J	T	EXEMPT
70 Cisco Sys Inc		None	J	T	EXEMPT
71 International Business Machines Corp	A	Dividend	K	T	EXEMPT
72 Lucent Technologies Inc	A	Dividend	J	T	EXEMPT
73 Nokia Corp	A	Dividend	J	T	EXEMPT
74 Pfizer Inc	A	Dividend	J	T	EXEMPT
75 SBC Communications Inc	A	Dividend	K	T	EXEMPT
76 Seligman New Technologies FD		None	K	T	EXEMPT
77 Sprint Corp	A	Dividend	J	T	EXEMPT
78 Sprint PCS	A	Dividend	J	T	EXEMPT
79 Tower Investors, LLC	A	Distribut ion	J	U	EXEMPT
80 Real Property - Long Beach, CA Parcel 2		None	N	T	EXEMPT
81 Real Property - Long Beach, CA Parcel 4		None	N	T	EXEMPT
82					
83					
84					
85					
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cost/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Anderson, Percy	Date of Report 01/28/2002
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Not Applicable

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Anderson, Percy	Date of Report 01/28/2002
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/28/02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		450	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		559	629	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable: —				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	60		000
Real estate owned-add schedule	1	525	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		70	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		60	000
				Net Worth	2	554	629
Total Assets	2	604	629	Total liabilities and net worth	2	604	629
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule) No			
On leases or contracts				Are you defendant in any suits or legal actions? No			
Legal Claims				Have you ever taken bankruptcy? No			
Provision for Federal Income Tax							
Other special debt							

Senator KOHL. We thank you, and welcome.  
Mr. Baylson?

**STATEMENT OF MICHAEL M. BAYLSON, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Mr. BAYLSON. Thank you, Senator. I very much appreciate the opportunity to appear here today.

I would like to introduce my wife, Dr. Frances Ruth Batzer Baylson, who is here with me; our son, Todd Baylson; our daughter, Ariella Baylson. I regret to say that our daughter, Mira Baylson, could not be here. She is a student at Wesleyan University and could not leave.

[The biographical information of Mr. Baylson follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Michael Morris Baylson
2. **Position:** State the position for which you have been nominated.  
  
United States District Court, Eastern District of Pennsylvania
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Duane Morris & Heckscher LLP  
One Liberty Place  
Philadelphia, PA 19103-7396  
215.979.1150
4. **Birthplace:** State date and place of birth.  
  
May 29, 1939, Philadelphia, PA
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Married.  
Spouse - Frances Ruth Batzer Baylson, M.D.  
Occupation - Physician with Philadelphia Fertility Institute, 815 Locust Street,  
Philadelphia, PA 19106  
  
I have two dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
University of Pennsylvania Law School  
September 1961 to June 1964, LL.B. (1964)

University of Pennsylvania Wharton School of Economics & Commerce  
September 1957 to June 1961, B.S. Econ. (1961)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

January 1993 - present: Partner, Duane Morris & Heckscher, Philadelphia, PA

October 1988 - January 1993: United States Attorney, Eastern District of Pennsylvania, Philadelphia, PA

March 1974 - October 1988: Partner, Duane Morris & Heckscher, Philadelphia, PA

January 1970 - February 1974: Associate, Duane Morris & Heckscher, Philadelphia, PA

1971 (3 months): Special Assistant District Attorney, Philadelphia, PA,  
*Commonwealth v. Walter*

January 1966 - January 1970: Assistant District Attorney, District Attorney's Office, Philadelphia, PA

September 1965 - December 1965: Defender Association of Philadelphia (volunteer)

September 1964 - August 1965: Law clerk, Honorable Joseph Sloane, Court of Common Pleas, Philadelphia County

1961 - 1976: Harry Weingast & Company (family clothing store), part-time (weekends, approximately 7 hours/weekend)

Unless otherwise indicated, all positions were paid positions.

Investment Partnerships

- a) 1985 - present: BC Partnership (investments)

- b) 1986 - present: Baumrin Partnership (real estate investments)
  - c) 1999 - present: Greenspan - Baylson Partnership (investments)
  - d) 1989 - 1998: BCG Partnership (investments)
8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
- None
9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
- a. Honorary Chair, United Cerebral Palsy Dinner, 1996
  - b. United States Department of Treasury, United States Attorney Award for Distinction in Financial Management, 1993
  - c. Attorney General's Special Commendation Award, 1993
  - d. Inspector General's Prosecutive Leadership Award, United States Department of Health and Human Services, 1992
  - e. Distinguished Service to Law Enforcement Award, County and State Detectives Association of Pennsylvania, 1992
  - f. United States Attorney General's Flag Award, 1991
  - g. Eagleville Award, Eagleville Hospital, 1991
  - h. Southeast Pennsylvania Police Chiefs, 1990
  - i. Law Enforcement Square Club, 1989
10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

- a. American Bar Association, Antitrust Law Section  
  
Vice-Chair, Ethics & Professionalism Committee, present  
Chair, Specialization Committee, 1999 - 2000  
Chair, Exemption and Immunities Committee, 1995 - 1998  
Member, "Illinois Brick Task Force, " 1978 (Testimony before  
Senate Judiciary Committee)
  - b. Philadelphia Bar Association  
  
Commission on Judicial Selection and Retention, 1988 - 1992
  - c. Fellow, American Bar Association
  - d. Pennsylvania Bar Association
  - e. Federalist Society, Philadelphia Chapter
11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.
- Supreme Court of the United States, 1970  
United States Court of Appeals for the Third Circuit, 1965  
United States Court of Appeals for the Eleventh Circuit, 2001  
United States District Court for Eastern District of Pennsylvania, 1965  
Supreme Court of Pennsylvania, 1965
12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.
- a) 1992 - 2001: Director, American Jewish Committee
  - b) 1993 - present: Director and Treasurer, Center for Community Interest

- c) Advisory Board, *Civil RICO Report*, 1995- present
- d) Local Civil Rules Advisory Committee, U.S.D.C. for Eastern Dist. of Pa, 1994 - 1999
- e) Transition Team for Pennsylvania Attorney General-Elect Michael Fisher, 1996
- f) Mayor's Search Committee for Inspector General Philadelphia Housing Authority, 1996
- g) Chairman, Mayor's Commission on Gambling, 1993 - 1995
- h) Faculty, University of Pennsylvania Law School Center on Professionalism, Ethics Course, 1993
- i) Director, Safe Streets, Inc., 1966 - 1970
- j) Director, Gaudenzia, Inc., 1968 - 1974
- k) Director, Jewish Employment and Vocational Society, 1975 - 10/88
- l) Harry K. Cohen & Company, Philadelphia, PA, 1963 (summer)
- m) Experiment in International Living, Alba, Italy, 1964 (summer)
- n) AIESEC - assigned to department store, Trieste, Italy, 1962 (summer)

None of these organizations formerly or currently discriminate on any basis.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

**Publications:**

"Distinctness without a Difference – the Supreme Court Speaks," *Civil RICO Report*, October 1, 2001

"U.S. Attorneys Play Key Role in National Crime Fighting Strategy," Washington Legal Foundation, July 27, 2001

Co-Editor, "State Action Practice Manual," Section of Antitrust Law of the American Bar Association, 2000

"Honda Settles Class Action Aspect of Dealership RICO Litigation For Record \$329 Million," *Civil RICO Report*, November 25, 1998

"Liability Issues Only Certified For Class Action In American Honda Civil RICO Litigation," *Civil RICO Report*, November 26, 1997

Contributor, *Antitrust Developments*, American Bar Association, Antitrust Section, 1997

Co-Author, "Courts Disagree on the Extent to Which the Foreign Sovereign Immunities Act Permits Pooling of Interests and Tiering of Subsidiaries by Foreign Governments," *The National Law Journal*, February 3, 1997

"Collision, Confusion or Conundrum? The State Action Doctrine Meets Interlocutory Appeal," *Antitrust Magazine*, Fall 1996

"3rd Circuit Rules Hyatt Corp. Must Vacate Caribbean Hotel," *The Legal Intelligencer*, September 23, 1996

"Courts Wrongly Cloud Pollution Clause," *Business Insurance*, August 12, 1996

"Wager on Gaming or Watch Rival States Lure Lucrative Play Away," *Philadelphia Inquirer*, July 23, 1995

"Antitrust Battle Remains Anybody's Game," *Physician's News Digest*, February 1994

"Do's and Don'ts for Preventing Health Fraud," *Physician's News Digest*, September 1993

"Mandatory Minimum Sentences, A Federal Prosecutor's Viewpoint," 40 *Federal Bar News & Journal* 167 (1993)

"Getting the Demons Into Heaven - A Good Corporate Compliance Program," 2 *Corporate Conduct Quarterly*, 33 (1992)

*Antitrust Evidence Handbook* (1991) (Member, Task Force, ABA Antitrust Section)

"The Feds Attack a Neighborhood Drug Ring, Step by Step," ABA Section of Litigation, 1991 *Complex Crimes Journal*, pp. 134-140



"When Civil Law Meets Double Jeopardy: Rough Remedial Justice, *Halper* and the Need for Parallel Civil and Criminal Proceedings," *United States Attorneys' Bulletin*, Volume 37, No. 10 (1989)

"Who Has Rights to the Shareholder Lists of National Banks During Tender Offers?," 104 *Banking Law Journal* 447 (1987)

"Artificial Insemination By Donor: Medical Science in Search of a Legal Theory," 5 *Seminars in Reproductive Endocrinology* 69 (1987)

"Tax Shelter Recoverable-Damage Rule Near," Vol. 194, No. 106, *The Legal Intelligencer*, September 4, 1986

"Legal Aspects of Abortion" in *Voluntary Termination of Pregnancy* (Hafez, ed., 1984)

"Donor Insemination" (Legal Aspects) (with S.L. Corson, M.D. and F.R. Batzer, M.D.) in Vol 12 *Obstetrics and Gynecology Annual* (1983)

"The Fifth Amendment in Civil Antitrust Litigation, Overview of Substantive Law," Address to the Antitrust Section of the American Bar Association, March 1981 (published in 50 *Antitrust Law Journal* 837 (1982))

"Procedures for Review and Determination of Issues Prior to Trial," ABA Antitrust Section, Monograph #3, *Expediting Pretrials and Trials of Antitrust Cases*, pp. 62-87

"Narrowing Issues in Antitrust Cases," 48 *Antitrust Law Journal* 705 (1980) (paper submitted to National Commission for Review of Antitrust Law & Procedures)

Editor, *Antitrust Discovery Handbook*, American Bar Association, 1981

**Speeches:**

Speaker, "Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Court," Philadelphia Bar Institute, October 11, 2001

Program Chair "State Action Exemption and Noerr Doctrine Committee Program," ABA Antitrust Section Annual Meeting, Washington, D.C., April 14, 1999

Panelist, "Securities Enforcement and Litigation at the End of the Millennium: New Developments, New Strategies," Continuing Legal Education Program, Philadelphia Bar Education Center, November 13, 1996

Co-Chair, "Antitrust Fundamentals," Continuing Legal Education Program, Philadelphia Bar Education Center, May 12, 1995

Panelist, "Focus" WCAU-TV Channel 10, discussing constitutional law and the proposed legislation to deal with terrorism, April 30, 1995

"The CPA in Criminal Tax Matters: Balancing the Risks and Opportunities," Pennsylvania Institute of Certified Public Accountants, December 1, 1993

"The U.S. Attorney: Providing Leadership and Establishing Priorities," Philadelphia Rotary Club, June 1993

"The Philadelphia Weed & Seed Story," Annual Meeting, American Street Corridor Business Association, October 14, 1992

"Attorneys as Witnesses Before a Federal Grand Jury and Why Rule 3.10 Should Not Apply," Philadelphia Bar Association, February 28, 1989

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

Testimony before the Senate Judiciary Committee in 1978, as a member of the ABA Antitrust Section "Illinois Brick Task Force"

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent - last physical examination October 16, 2001

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

**Response:** N/A

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.
- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**Response:**

- (a) Assistant District Attorney, Philadelphia, PA, January 1966 - January 1970 - appointed by District Attorney Arlen Specter  
  
United States Attorney, Eastern District of Pennsylvania, October 1988 - January 1993 - appointed by Attorney General Dick Thornburgh and U.S. District Court for Eastern District of Pennsylvania  
  
Elected delegate, Republican National Convention, 2d Congressional District, 1996  
  
I have had no unsuccessful candidacies for elected offices; I have never been nominated for an appointed office for which I was not confirmed.
- (b) Treasurer, Arlen Specter for United States Senate Committee, 1980 - 10/88  
  
Legal counsel to Arlen Specter in primary election campaigns for U.S. Senate and Pennsylvania Governor, 1976 and 1978

Treasurer, Big Tent Political Action Committee, 1994 - 1999

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

**Response:**

Clerk to Honorable Joseph Sloane, Court of Common Pleas, Philadelphia County, September 1964 - August 1965

- (2) whether you practiced alone, and if so, the addresses and dates;

**Response:**

No

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

**Response:**

Defender Association of Philadelphia, 9/65 - 12/65  
 District Attorney's Office, Philadelphia, PA, 1/66 - 1/70  
 Associate, Duane Morris & Heckscher, Philadelphia, PA, 1/70 - 2/74  
 Partner, Duane Morris & Heckscher, Philadelphia, 3/74 - 10/88 and  
 1/93 - present  
 United States Attorney, Eastern District of PA, 10/88 - 1/93

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

**Response:**

I have had two separate positions as a prosecutor, as an Assistant District Attorney, in state court from January 1966 to January 1970, and as U.S. Attorney from October 1988 to January 1993.

While in private practice, I have occasionally represented a number of individuals and corporations in a criminal context, both defending prosecutions and also representing clients before an investigating grand jury.

Aside from my prosecutorial positions, and the occasional criminal case, the great majority of my work has been in commercial litigation. From approximately 1970 until 1974, as an associate at Duane, Morris & Heckscher, I generally assisted in the preparation of complex cases for trial, including written discovery and taking depositions.

From 1974 to 1988, as a partner, I became more involved in actual supervision and trial of complex federal litigation. During this period I tried approximately fifteen cases to verdict, including several antitrust and securities cases, representing both plaintiffs and defendants.

As U.S. Attorney from October 1988 to January 1993, I was in charge of an office with approximately 120 lawyers (three-fourths did criminal work, one fourth did civil work), actively managed a number of investigations and handled approximately fifteen cases personally (including three jury trials of criminal prosecutions).

Since my return to Duane Morris in January 1993, I have supervised and/or tried numerous complex commercial litigation matters. In the last several years, as Chair of our Trial Department and a member of our firm's Partner Board and Executive Committee, I have extensive management duties. The Trial Department is the firm's largest, consisting of approximately 130 lawyers spread over our 20 offices.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

***Response:***

My typical clients are either individuals or businesses which have commercial litigation matters, evenly divided between plaintiffs and defendants. In recent years I have specialized in antitrust, federal securities, RICO and white collar crime matters. I have been called upon to handle internal investigations and to prepare expert witness reports in various situations.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

**Response:**

District Attorney's Office, 1/66 - 1/70 - My court appearances were frequent. During the first year, I was principally assigned to Magistrates Court, handling preliminary hearings, and to Motion Court. In the second through fourth years, I had an active trial practice, trying cases virtually every day. In 1969, as Chief of the Homicide Division, I continued to try cases frequently, but also had significant administrative duties and coordination with the Homicide Squad of the Philadelphia Police Department.

Duane Morris & Heckscher, 1/70 - 10/88 - I appeared in court on motions approximately once a month, argued appeals before appellate courts approximately once a year, and tried one to two cases each year. Since returning to the firm in January 1993, I have tried five jury trials and argued numerous Motions and several appellate arguments.

United States Attorney, 10/88 - 1/93 - I handled approximately 15 criminal cases and one civil case. Most of the criminal cases resulted in guilty pleas; however, I tried 3 jury trials. The civil case, *Baylson v. Disciplinary Board of Supreme Court of Pennsylvania*, resulted in a significant opinion by the Third Circuit reported at 975 F.2d 102 (1992).

- (2) Indicate the percentage of these appearances in
- (A) federal courts;
  - (B) state courts of record;
  - (C) other courts.

**Response:**

- (A) Federal courts - 80%
- (B) State courts of record - 20%
- (C) Other courts - N/A

- (3) Indicate the percentage of these appearances in:
- (A) civil proceedings;
  - (B) criminal proceedings.

**Response:**

- (A) Civil proceedings - 60%
- (B) Criminal proceedings - 40%

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

**Response:**

Sole counsel - approximately 100  
Chief Counsel - 10 to 20  
Associate counsel - 5 to 10

- (5) Indicate the percentage of these trials that were decided by a jury.

**Response:**

90% of the cases were decided by a jury

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

**Response:**

My practice before the United States Supreme Court has been limited to filing or opposing Petitions for Certiorari. I have not written any briefs on the merits and I have never argued before the U.S. Supreme Court.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

**Response:**

Gaudenzia, Inc. In 1968, I was a founder of this nonprofit corporation which was the first in the Philadelphia area to offer therapeutic rehabilitation for drug addicts. Since that time, I have continued as a volunteer to help Gaudenzia, and since 1975 (except during my tenure as United States Attorney), have served as its general counsel. Gaudenzia is now the largest Pennsylvania agency involved in drug and alcohol abuse

treatment, operating numerous residential and out-patient facilities in the eastern half of Pennsylvania. In the earlier years, I spent several hundred hours per year; in later years, I spent several hours per year on fund-raising.

As United States Attorney, I worked extensively with community groups in the initiation of the Weed & Seed Program. Our office was credited by Attorney General William P. Barr, Jr. as having provided the initiative and concepts behind what is now a nationwide program under the administration of the Executive Office for Weed & Seed. As United States Attorney, I spent hundreds of hours on this program.

For many years, I was the administrator of the Duane Morris & Heckscher participation in the handling of pro bono prisoner civil rights cases (in which our attorneys were appointed by federal judges to represent prisoners). From 1975 to 1988, I spent approximately fifty hours per year on this program.

In the 1970's, I served as court-appointed counsel for indigent defendants, including one murder case in which I represented the defendant in three jury trials and four appeals, over 11 years. I spent over two thousand hours on this case.

Defenders Association of Philadelphia, volunteer, September - December, 1965. I represented indigent defendants accused of crimes, full-time for four months, without compensation.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
  - (a) the citations, if the cases were reported, and the docket number and date if unreported;
  - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
  - (c) the party or parties whom you represented; and
  - (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.



*Responses:*

- (1) GTE Corporation/Bell Atlantic Merger. This case involved the successful representation of GTE Corporation in a trial before Administrative Law Judge Solomon of the Pa. Public Utilities Commission ("PUC") (docket no. A-310200 F0002).

Summary: Under Pennsylvania law, the proposed merger of GTE and Bell Atlantic required approval of the PUC. The Pennsylvania Attorney General was an active participant in the proceedings. The issues were primarily concerned with antitrust economics. I was chief counsel for GTE in all pretrial matters and during the ten days of testimony, and on appeal to the PUC, which approved the merger. The case was started in 1999 and concluded in 2000.

Co-Counsel: Julia A. Conover, Vice President & General Counsel  
Verizon Pennsylvania  
1717 Arch Street, 32N  
Philadelphia, PA 19103  
215.963.6001

Opposing Counsel: James A. Donahue, III, Chief Deputy Attorney General  
(Selected) Antitrust Section  
1435 Strawberry Square  
Harrisburg, PA 17120  
717.787.4530

Joseph C. Crawford, Esquire  
Wolf Block Schorr & Solis-Cohen  
1650 Arch Street, 22<sup>nd</sup> Floor  
Philadelphia, PA 19103-2097  
215.977.2293

- (2) *Baylson v. Disciplinary Board of Supreme Court of Pennsylvania*. Complaint filed in U.S. District Court, Eastern District of Pa. Summary judgment was granted in our favor and affirmed on appeal, 975 F.2d 102 (3d. Cir. 1992), cert. den. 113 S.Ct. 1578 (1993).

Summary: Just prior to my becoming U.S. Attorney, the Pennsylvania Supreme Court adopted Rule 3.10 of the Pennsylvania Rules of Professional Conduct which required federal and state prosecutors to secure court approval in certain circumstances before issuing a subpoena to an attorney to testify before an investigating grand jury. Believing that this rule was inconsistent with the U.S.

Constitution and also the responsibilities of federal prosecutors, I, joined by the two other U.S. Attorneys in Pennsylvania, initiated a civil Complaint against the Disciplinary Board of the Supreme Court of Pennsylvania. After a short period of discovery, I prepared and argued a Motion for Summary Judgment before U.S. District Court Judge Broderick, which was granted, and also argued and secured an affirmance from the Third Circuit, which held that the District Court judges within Pennsylvania did not have authority to adopt Rule 3.10 as binding on federal prosecutors, and furthermore, Rule 3.10 violated the Supremacy Clause of the U.S. Constitution. This ruling is now noted as an exception to Rule 3.10, which is still binding on state prosecutors and the case has been cited by several other federal Courts of Appeal. *See, e.g., Stern v. U.S. District Court for District of Massachusetts*, 214 F.3d 4 (1<sup>st</sup> Cir. 2000).

Opposing Counsel: Richard A. Sprague, Esquire  
 Sprague & Sprague  
 Suite 400, Wellington building  
 135 South 19<sup>th</sup> Street  
 Philadelphia, PA 19103  
 215.561.7681

- (3) *Government Guarantee Fund of Republic of Finland and Skopbank v. Hyatt Corporation*, C.A. 1995-49. This case involved complex contract and RICO litigation before Honorable Thomas K. Moore, District Court of the Virgin Islands, representing lender and owner of resort hotel previously managed by Hyatt Corporation. The case was settled very favorably for our client, amount confidential, the day before jury selection in May 1998.

Summary: Our client was a Finnish bank which had loaned over \$100 million to develop a resort hotel on the island of St. John, U.S. Virgin Islands. I represented the bank in its lawsuit against Hyatt and successfully secured a judicial order upholding our client's termination of Hyatt as manager of the hotel, and requiring Hyatt to vacate the premises, which issues I personally argued before the District Court and the Third Circuit. A very contentious period of discovery ensued on claims and counterclaims for damages during which Hyatt and its counsel were sanctioned for discovery abuses, resulting in a significant opinion depriving Hyatt of its attorney-client privilege as a sanction. This case has been widely cited as the first federal appellate ruling on the legal responsibilities of an agent managing a hotel for the Owner. I was lead counsel in the case, arguing all significant Motions, negotiating the settlement, and supervising a team of 7 lawyers.

Significant Decisions:

- (a) Successfully secured court order removing Hyatt as manager of hotel; argued appeal on August 16, 1966; order affirmed, 166 F.R.D. 321 (D.V.I.), *aff'd* 95 F.3d 291 (3d Cir. 1996).
- (b) Secured court order for \$13 million surety bond entered by Hyatt for stay of order terminating Hyatt as manager of hotel.
- (c) Successfully argued motions for summary judgment resulting in:
  - (1) Dismissal of all of Hyatt's counterclaims and entry of judgment in favor of our client on liability. 960 F.Supp. 931(D.V.I. 1997).
  - (2) Granting summary judgment in favor of clients on certain liability issues. *See* 1997 U.S. Dist. LEXIS 9805 and 1998 U.S. Dist. LEXIS 6839.
- (d) Secured sanctions against Hyatt for discovery abuses. *See* 177 F.R.D. 336; 1997 U.S. Dist. LEXIS 20591; Petition for Mandamus dismissed, April 23, 1998.
- (e) Secured preliminary injunction after evidentiary hearing on June 30, 1995, enjoining Government of Virgin Islands from rescinding deed for sale of hotel.

Local Co-Counsel: Warren B. Cole, Esquire,  
 Hunter Colianni Cole & Turner  
 1136 King Street, 3<sup>rd</sup> Floor  
 Christiansted, St. Croix, U.S.V.I. 00820  
 340.773.3535

Samuel H. Hall, Jr., Esquire  
 Birch deJongh Hindels & Hall  
 Poinsettia House at Bluebeard's Castle  
 1130 Estate Taarnejerg  
 St. Thomas, U.S.V.I. 00802  
 340.774.1100

Opposing Counsel: Claude D. Montgomery, Esquire  
 Phillips Lytle Hitchcock Blaine & Huber  
 437 Madison Avenue, 34<sup>th</sup> Floor  
 New York, NY 10022  
 212.508.0480

- (4) *In Re: American Honda Motor Company, Inc. Dealership Relations Litigation*, MDL Case No. 1069, Honorable J. Frederick Motz, U.S. District Court for the District of Md. I represented ten plaintiffs in consolidated RICO and antitrust cases arising out of criminal convictions of over 30 former executives of American Honda; I was one of nine members of Plaintiffs' Executive Committee; presented various arguments before Judge Motz on pretrial matters; the case settled for \$329 million in October 1998; there was a supplemental settlement of \$60 million in January 2000.

Summary: This case is the largest RICO settlement to date. There are a number of significant opinions from this litigation including:

- i. Decision requiring Honda Ltd., the Japanese parent of American Honda, to defend this case in Baltimore, MD despite its status as a foreign corporation (which I argued on behalf of all plaintiffs).
- ii. Decisions denying Motions to Dismiss RICO claims and ruling on class action issues, 985 F. Supp. 1045, 1997 U.S. Dist. LEXIS 3538 (1997), 979 F. Supp. 365, 1997 U.S. Dist. LEXIS 16580 (1997).
- iii. Sanctions against American Honda for its discovery abuses, resulting in a 13-year denial of attorney-client privilege and numerous sanctions against Honda.

Co-Counsel:

Richard B. McNamara, Esquire  
Wiggin & Nourie  
20 Market Street  
P.O. Box 808  
Manchester, NH 03105  
603.669.2211

William A. Kershaw, Esquire  
Kronick Moskovitz Tiedemann & Girard  
400 Capitol Mall, 27<sup>th</sup> Floor  
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916.321.4500

Harvey G. Sanders, Esquire  
Leatherwood Walker Todd & Mann  
100 East Coffee Street  
P.O. Box 87  
Greenville, SC 29602-0087  
864.277.4403

Mark Rapazzini, Esquire  
Rapazzini & Graham  
100 Spear Street, Suite 1500  
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Lawrence Silver, Esquire  
Silver & Field  
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Costa Mesa, CA 92626-7147  
714.445.0550

James S. Baum, Esquire  
Schrag & Baum  
701 Panoramic Way  
Berkeley, CA 94704  
510.849.1618

James P. Ulwick, Esquire  
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One South Street, Suite 2600  
Baltimore, MD 21202-3201  
301.927.7943

Donald Beskind, Esquire  
Twiggs Abrams Strickland & Trehly  
First Union Capitol Center, Suite 1100  
150 Fayetteville Street Mall  
Raleigh, NC 27601  
919.828.4357

Opposing Counsel: David Irwin, Esquire  
Irwin Kerr Green McDonald & Dexter  
250 West Pratt Street, Suite 1133  
Baltimore, MD 21201  
410.659.5757

Robert A. Van Nest, Esquire  
Keker & Van Nest  
710 Sansome Street  
San Francisco, CA 94111-1704  
415.391.5400

- (5) *Bonjorno v. Kaiser Aluminum & Chemical Corp.* U.S. District Court, E.D. Pa. I represented the plaintiff in an antitrust treble damage jury trial, which resulted in a \$9.6 million judgment, affirmed, 752 F.2d 802 (3d Cir. 1984), *cert. den.* 106 S. Ct. 3284 (1986).

Summary: I was trial counsel for plaintiff in this antitrust matter which was tried on three separate occasions. During the first trial, before Honorable Edmund Cahn, a directed verdict was entered against our client but was reversed on appeal. The second trial before Honorable Norma Shapiro resulted in a treble damage jury verdict in our client's favor but the court granted a new trial as to damages only. The third trial resulted in a treble damage verdict for \$9.6 million in favor of our client which was affirmed on appeal. In addition, our client received approximately \$5 million in interest and attorneys' fees. I was sole counsel at all three trials, and successfully argued three separate appeals. The case was started in 1974 and concluded in 1989.

Opposing Counsel: Richard P. McElroy, Esquire  
Blank Rome Comisky & McCauley  
One Logan Square  
Philadelphia, PA 19103-6998  
215.569.5631

- (6) *Christy v. Pennsylvania Turnpike Commission, et al.*, C.A. 1994-3346.  
Honorable J. Curtis Joyner, U.S. District Court for Eastern District of Pa.

Summary: This case involved defense of a complex civil rights claim for denial of promotion due to alleged political discrimination; jury trial resulted in defense verdict for all of our clients (January 30, 1997). I also argued two interlocutory appeals before U.S. Court of Appeals for Third Circuit on the issue of qualified immunity.

Opposing Counsel: John P. Hickey, Esquire  
Kleinbard, Bell & Brecker  
1900 Market Street, Suite 700  
Philadelphia, PA 19103  
215.496.7219

William Goldstein, Esquire  
Groen Lauson Goldberg & Rubenstone  
4 Greenwood Square, Suite 200  
Bensalem, PA 19020  
215.638.9330

- (7) *Hunt v. Bankers Trust and Hunt v. Penrod Drilling Co., et al.*, C.A. No. 3-86-1684, consolidated with *Penrod Drilling v. Manufacturers Hanover*, C.A. No. 3-86-2012, Judges Sanders and Fish, U.S. District Court for Southern District of Texas.

Summary: I was counsel for defendant European American Bank. The case involved lender liability litigation involving claims and counterclaims exceeding one billion dollars. I was an active member of the defense team and, as chairman of the defense document committee, supervised the computerization of over one million documents. This case was settled.

Opposing Counsel: Terrell W. Oxford, Esquire  
Susman Godfrey & McGowan  
2400 First Interstate Bank Plaza, 1000 Louisiana  
Houston, TX 77002-5096  
713.651.9366

- (8) *General Refractories Corp. v. Belmont Industries*, Court of Common Pleas, Montgomery County, PA, No. 85-8350, Honorable Samuel W. Salus, II.

Summary: I was co-counsel in representing plaintiff against a takeover attempt by defendant; the case was settled before trial.

Co-Counsel: Peter Collins, Esquire  
535 Fifth Avenue  
New York, NY 10017  
212.808.5330

Opposing Counsel: Morris Gerber, Esquire  
Gerber & Gerber  
One Montgomery Plaza, Suite 500  
Norristown, PA 19401  
215.279-6700

- (9) *Balco v. Carrier Corp.*, C.A. No. 82-5079, Honorable Charles R. Weiner, U.S. District Court for Eastern District of Pa.

Summary: I was counsel for plaintiffs in this antitrust class action against manufacturers of air conditioning equipment. I achieved favorable monetary and non-monetary settlement terms for our clients during a jury trial against one of the defendants, Trane Corporation; the other defendants settled prior to trial. I personally handled extensive discovery and the trial.

Opposing Counsel: Bertram M. Kantor, Esquire  
Wachtell Lipton Rosen & Katz  
299 Park Avenue  
New York, NY 10171  
212.371.9200

Patrick T. Ryan, Esquire  
Drinker Biddle & Reath  
1100 PNB Building  
Philadelphia, PA 19107  
215.988.2865

Roberts B. Owen, Esquire  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
Washington, DC  
202.662.6000

- (10) *Somers v. Sentinel*, C.A. No. 87-5251, Judge Huyett, U.S. District Court, Eastern District of Pa.

Summary: I represented an attorney accused of malpractice and fraud in connection with publication of a book. The jury rendered a verdict for our client which was affirmed on appeal.

Opposing Counsel: Edward Fackenthal, Esquire  
902 One Montgomery Plaza  
P.O. Box 751  
Norristown, PA 19404  
215.279.3370

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None



21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.
- a. As Trustee for the Arlen Specter and Marvin Katz Pension and Profit Sharing Plans, I was a plaintiff in a suit in the Court of Common Pleas of Philadelphia County against various financial institutions arising out of the embezzlement of funds from the Plans. I never testified in the case, which was settled during trial.
  - b. Estate of Selma Phillips. I was designated trustee of the estate of a deceased aunt, and there is currently litigation in front of the Orphans' Court of Philadelphia Co. by a cousin who claims that the decedent revoked the trust prior to my aunt's death. Pending.
  - c. As United States Attorney, I was a plaintiff in a suit against the Disciplinary Board of the Supreme Court of Pennsylvania to void Rule 3.10, Pa. Rule of Professional Conduct as applicable to federal prosecutors.
22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.
- I will consider recusal of myself from involvement in any cases in which any attorney of Duane Morris is representing a party, or any cases in which one of the parties was represented by me or was involved as a party in a case in which Duane Morris was counsel, for as long as I am receiving any financial benefits from Duane Morris, or otherwise have any business relationships with the firm.
- I will recuse myself from any case as necessary pursuant to 28 U.S.C. § 455. I will follow the Code of Judicial Conduct.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

- (a) If so, did it recommend your nomination?

**Response:**

Yes - I applied to the Federal Judicial Nominating Commission for the Eastern District of Pennsylvania and was interviewed and recommended.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

**Response:**

I was interviewed by Commission Chairman Thomas Kline, Esquire, which was videotaped for viewing by other Commission members.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

***Response:***

No

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## FINANCIAL STATEMENT

## NET WORTH

**MICHAEL M. BAYLSON**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	1/18/02	40	000.00	Notes payable to banks-secured			
U.S. Government securities-add schedule	A	25	000.00	Notes payable to banks-unsecured			
Listed securities-add schedule	B	1788	833.39	Notes payable to relatives			
Unlisted securities-add schedule	C	14	000.00	Notes payable to others			
Accounts and notes receivable:	NONE		-	Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	770	000.00	
Real estate owned-add schedule	D	1750	000.00	Chattel mortgages and other liens payable			
Real estate mortgages receivable	NONE		-	Other debts-itemize:			
Autos and other personal property		30	000.00	Ameritrade - Margin Debt	154	218.00	
Cash value-life insurance		10	000.00	401(k) Loan	33	597.00	
Other assets itemize: Artwork and Books		200	000.00				
Partnerships	E	1156	000.00				
Retirement Plans	F	3506	955.15				
Business Interests	G	259	900.00	Total liabilities	957	815.00	
Mutual Funds	H	624	562.00	Net Worth	9	688	529.19
Dependent Children	I-162	1241	693.65				
Total Assets		10646	344.19	Total liabilities and net worth	10	646	344.19
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

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SCHEDULE A

U.S. GOVERNMENT SECURITIES

MICHAEL M. BAYLSON

SAVINGS BONDS

Approximate current value	\$25,000.00
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01/29/2002 TUE 15:42 [TX/RX NO 93651] 003

01/29/02 TUE 16:30 FAX

0004

**Michael M. & Frances R. Baylson**  
**Schedule B**  
**Listed Securities as of 12/31/01**

J - Joint  
H - Husband  
W - Wife

	Description	Quantity	12/31/01 Value
H	AT&T Wireless Svcs Inc.	325.000	\$ 4,670.25
H	Avaya Inc.	76.000	\$ 923.40
H	Bellsouth Corp.	1,025.000	\$ 39,103.75
H	Connectiv	104.000	\$ 2,546.96
H	Exxon Mobil Corp.	2,400.000	\$ 94,320.00
H	Fleetboston Financial Corp.	614.000	\$ 22,411.00
H	Honeywell Int'l	266.741	\$ 9,049.21
H	Motorola Inc.	150.000	\$ 2,253.00
H	Qwest Communications International Inc.	420.000	\$ 5,934.60
H	SBC Communications Inc.	1,888.000	\$ 73,952.96
H	Verizon Communications	1,217.000	\$ 57,758.62
H	Viacom Inc. Class B	212.000	\$ 9,359.80
H	Israel State 15 Year Dollar Current Income Bond 7th Development RG May 4.000 12/01/2001 DTD 12/01/96	500.000	\$ 500.00
H	Command Money Fund	1,736.000	\$ 3,478.00
H	Prudential Cash Balance	0.610	\$ 0.81
J	AT&T Corp.	323.352	\$ 5,865.61
J	AT&T Wireless Svcs Inc.	103.000	\$ 1,480.11
J	Avaya Inc.	20.000	\$ 243.00
J	BP Plc Sponsored ADR	712.050	\$ 33,117.45
J	Cerergy Inc.	600.000	\$ 20,532.00
J	Choicepoint Inc.	355.000	\$ 17,994.95
J	Comcast Corp Cl A	401.676	\$ 14,460.34
J	Comcast Corp Cl A Special	802.654	\$ 28,895.54
J	Compaq Computer Corp	283.000	\$ 2,762.08
J	Computone Corp. New	167.000	\$ 141.95
J	Conoco Inc. Cl B	383.000	\$ 10,838.90
J	Delphi Automotive Systems Corp.	106.000	\$ 1,447.96
J	DuPont EI De Nemours & Co.	196.192	\$ 8,340.12
J	Eastman Chemical Co.	101.593	\$ 3,064.16
J	Eastman Kodak Co.	377.338	\$ 11,105.06
J	Electronic Data Systems Corp.	0.097	\$ 6.65
J	Equifax Inc.	1,201.452	\$ 29,015.07
J	Exelon Corp.	209.341	\$ 10,023.25
J	E4L Inc.	200.000	\$ 0.50
J	Fleetboston Financial Corp.	1,005.000	\$ 36,682.50
J	General Electric Co.	5,096.125	\$ 204,252.69
J	General Motors Corp.	166.930	\$ 8,112.80
J	General Motors Corp. Class H New	0.023	\$ 0.36
J	Hudson United Bancorp	957.000	\$ 27,465.90
J	Inkline Pharmaceutical Co. Inc.	2,000.000	\$ 3,120.00
J	International Business Machines	1,145.369	\$ 138,543.83

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0005

**Michael M. & Frances R. Bayison**  
**Schedule B**  
**Listed Securities as of 12/31/01**

J - Joint  
H - Husband  
W - Wife

	Description	Quantity	12/31/01 Value
J	J.P. Morgan Chase & Co. Common New	793.871	\$ 28,857.21
J	Keycorp New	194.449	\$ 4,489.49
J	Lucent Technologies Inc.	251.763	\$ 1,586.11
J	MHM Services Inc.	1.000	\$ 50.00
J	Motorola Inc.	309.802	\$ 4,653.23
J	News Corporation Limited ADR New	100.000	\$ 3,181.00
J	PNC Financial Services Corp.	1,408.553	\$ 79,160.68
J	Prologis Trust SBI	1,000.000	\$ 21,510.00
J	Tele Norte Leste Participacoes SA ADR	46.000	\$ 718.98
J	Telecomunicacoes De Sao Paulo Sponsored ADR	400.000	\$ 5,280.00
J	Telefonica De Espana SA Sponsored ADR	60.000	\$ 2,404.80
J	TPI Enterprise Inc.	200.000	\$ 1.00
J	Verizon Communications	1,838.749	\$ 87,267.03
J	Wachovia Corp. 2nd	748.140	\$ 23,461.67
J	Walmart De Mexico SA Spon ADR	111.000	\$ 3,026.69
J	Western Digital Corp Del	200.000	\$ 1,254.00
J	Mediq Inc. Ser A 13% Cum Preferred	162.000	\$ 0.02
J	Telecomunicacoes Brasileiras SA Telebras Preferred	400,000.000	\$ -
J	Telecomunicacoes Brasileiras SA Spon ADR	800.000	\$ 32,000.00
J	Telefonica Data Brasil Holdings Spon ADR	8.000	\$ 164.46
J	Franklin Mutual Ser Fund Inc.	1,523.284	\$ 25,332.21
J	Munder Funds Inc Netnet Fund Class C	335.900	\$ 5,884.97
J	Prudential Cash Balance	(6,757.630)	\$ (6,757.63)
J	OMF Money Market Portfolio	663.640	\$ 1,000.26
J	Aetna Inc. New	55.000	\$ 1,814.45
J	Bestnet Communications Inc.	500.000	\$ 585.00
J	Comcast Corp. - Cl A	400.000	\$ 14,400.00
J	Comcast Corp. - Cl A Special	400.000	\$ 14,400.00
J	Hudson United Bancorp	543.000	\$ 15,584.10
J	Merlo Acquisition Corporation	20.000	\$ 18.60
J	Merck & Co. Inc.	400.000	\$ 23,620.00
J	PNC Financial Services Group Inc.	100.000	\$ 5,620.00
J	Avaya Inc.	137.000	\$ 1,558.00
J	Bey View Cap. Corp.	1,000.000	\$ 7,290.00
J	Bestnet Communications Corp.	1,000.000	\$ 1,650.00
J	Cendant Corp.	2,000.000	\$ 34,080.00
J	Cisco Systems Inc.	500.000	\$ 10,220.00
J	Columbia Labs Inc.	10,000.000	\$ 29,500.00
J	Covad Communications Group	5,000.000	\$ 4,600.00
J	Covalent Group Inc.	10,000.000	\$ 27,800.00
J	Diagnostic Health Svcs Inc.	9,300.000	\$ 47.00
J	Eftak Corp.	334.000	\$ 17.00
J	Inkline Pharmaceutical Co. Inc.	17,500.000	\$ 25,200.00
J	Intel Corp.	1,000.000	\$ 32,660.00

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**Michael M. & Frances R. Bayison**  
**Schedule B**  
**Listed Securities as of 12/31/01**

J - Joint  
H - Husband  
W - Wife

	Description	Quantity	12/31/01 Value
J	Lucent Technologies Inc.	1,650,000	\$ 12,078.00
J	Mediq Inc. Preferred	75,000	\$ 15.00
J	Mellon Financial Corp.	300,000	\$ 11,217.00
J	Moyco Technologies Inc.	8,250,000	\$ 10,024.00
J	Nokia Corp ADR	2,000,000	\$ 46,020.00
J	Oracle Corp.	600,000	\$ 8,418.00
J	Pfizer Inc.	600,000	\$ 25,986.00
J	Qualcomm Communications	600,000	\$ 35,232.00
J	Owest Communications International Inc.	500,000	\$ 5,950.00
J	Resource America Inc. Cl A Com	1,500,000	\$ 12,855.00
J	Rite Aid Corp.	5,000,000	\$ 23,450.00
J	Safeguard Scientifics Inc.	6,000,000	\$ 25,140.00
J	Sun Microsystems Inc.	2,500,000	\$ 35,600.00
J	Verizon Communications	244,000	\$ 11,468.00
J	Worldcom Inc.	150,000	\$ 2,181.00
J	Worldcom Inc. Mci Group	6,000	\$ 79.00
W	AXA	119,659	\$ 3,254.72
	<b>Total Listed Securities Value</b>		<b>\$ 1,788,833.39</b>

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## SCHEDULE C

## UNLISTED SECURITIES

MICHAEL M. &amp; FRANCES BAYLSON

Israel Bonds	\$4,000.00
Advanced Reproductive Care (Cost)	\$10,000.00

01/29/2002 15:42 FAX TX/RX NO 9365 0008

## SCHEDULE D

## REAL ESTATE

MICHAEL M. BAYLSON

Primary Residence - 4115 Timber Lane

Estimated Fair Market Value \$350,000.00

Vacation Home - Vineyard Haven, MA

Cost \$1,400,000.00

Mortgage - Alliance Mortgage (\$770,000.00)

See Also Schedule E

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0009

SCHEDULE E

PARTNERSHIPS

MICHAEL M. BAYLSON

BAUMRIN ET AL. PARTNERSHIP

1/4 interest in real estate, Old Country Road Martha's Vineyard, MA Estimated Fair Market Value	\$50,000.00
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BC PARTNERSHIP (1/2 Interest)

1. Building - Plymouth Township, PA Estimated Fair Market Value \$1,400,000.00	\$700,000.00
2. Limited Partner in Wheeler Terrace Cost	\$20,000.00

DUANE, MORRIS

Capital Account As of December 31, 2001	\$328,000.00
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GREENSPAN-BAYLSON PARTNERSHIP

Interest in LLR Equity Limited Partnership Cost	<u>\$58,000.00</u>
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Total Value of Partnerships	<b>\$1,156,000.00</b>
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## SCHEDULE F

## RETIREMENT PLANS AND IRA ACCOUNTS (12/31/01)

## MICHAEL M. BAYLSON

IRA - Vanguard Star Fund	\$83,481
Duane, Morris Plans (1/16/02)	
Schwab Inst Large Cap Value Trust	\$188,915.00
Vanguard Growth Equity	\$230,535.26
Sound Shore	\$181,271.97
StoneRidge Small Cap	\$116,308.65
First Eagle SoGen Overseas A	\$170,851.68
Blackrock Core Bond Svc	\$369,597.91
Marvin & Palmer Global Portfolio	<u>\$89,949.17</u>
Total Value DM Retirement Plan	\$1,347,429.64
Duane, Morris - 401K	
Schwab Inst Large Cap Value Trust	\$414,433.00
Sound Shore	\$53,683.00
Participant Loan Fund	<u>\$31,677.71</u>
Total Value DM 401K Plan	\$499,793.71

## FRANCIS R. BAYLSON, M.D.

Morgan Stanley Account	
Equity	\$82,530.93
Value	\$133,008.50
Fixed Income	\$157,201.58
Small Cap Val	<u>\$138,723.79</u>
Total Value MSDW Retirement Plan	\$511,464.80
Gabelli Account	\$237,349.00
Great Western Account	\$124,942.00
Brandywine Mutual Fund	<u>\$702,495.00</u>
Total Value of all Retirement Accounts	\$3,506,955.15

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## SCHEDULE G

## BUSINESS INTEREST (12/31/01)

FRANCES R. BATZER BAYLSON, M.D.

## OWNERSHIP INTEREST IN:

Philadelphia Fertility Institute	\$96,000
Pennsylvania Reproductive Assoc.	\$103,600
Clinton Endocrine Assoc	\$55,400
Fertility testing Lab	<u>\$4,900</u>
Total Value Business Interests	<b>\$259,900</b>

MICHAEL M. BAYLSON

SupplyForce.Com	No Value
Fiberzone.Com	No Value

01/29/02 TUE 16:32 FAX

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SCHEDULE H  
MUTUAL FUNDS

MICHAEL AND FRANCES BAYLSON

Morgan Stanley Dean Witter Account	
(Value as of 10/11/01)	
Equity	\$57,713.00
Small Cap Value	\$67,688.00
Mid Cap Growth	\$59,117.00
Cash Reserve	\$10.00
Mid Cap Value	<u>\$77,610.00</u>
Total Value MSDW Account	<b>\$262,138.00</b>
Vanguard Prime Money Market Fund	<b>\$1,408.00</b>
(Value as of 9/30/01)	

FRANCES R. BAYLSON

Vanguard Prime Money Market Fund	<b>\$1,808.00</b>
(Value as of 9/30/01)	
Vanguard High-Yield Corp. Fund	<b>\$1,818.00</b>
(Value as of 9/30/01)	
Brandywine Mutual Fund (12/31/01 Value)	<u><b>\$357,390.00</b></u>
Total Value of Mutual Funds	<b>\$624,562.00</b>

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SCHEDULE I  
MUTUAL FUNDS (AS OF 12/31/01)

## DAUGHTER #1

## MSDW UGMA Account

Equity	\$9,955.83
Small Cap Value	\$11,458.81
Mid Cap Growth	\$13,341.69
International Equity A	<u>\$7,428.31</u>

Total Value MSDW UGMA Account **\$42,184.64**

## MSDW Trust Account

Equity	\$47,209.88
Value	\$121,732.43
Mid Cap Growth	\$33,778.12
Mid Cap Growth II	\$14,306.57
Mid Cap Value	\$105,584.66
Small Cap Growth	<u>\$61,822.86</u>

Total Value MSDW Trust Account **\$384,434.52**

Vanguard Windsor II Fund **\$3,557.00**

Vanguard Star Fund **\$21,770.00**

STOCKS

200 Shares AT&T	\$3,600.00
60 Shares Eastman Chemical	\$2,340.00
160 Shares Eastman Kodak	\$4,640.00
501 Shares IBM	\$60,302.37
440 Shares PNC Fin'l Svcs	\$24,640.00
220 Shares Pep Boys	\$2,725.00
328 Shares Fleet	\$11,972.00
680 Shares Verizon	\$31,960.00
160 Shares Lucent	<u>\$960.00</u>

Total Value Stocks **\$143,139.37**

Total Value **\$595,085.53**

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## SCHEDULE I

## MUTUAL FUNDS (AS OF 12/31/01)

## DAUGHTER #2

## MSDW UGMA Account

Equity	\$9,955.83
Small Cap Value	\$11,458.81
Mid Cap Growth	\$20,846.07
International Equity A	<u>\$7,428.31</u>

Total Value MSDW UGMA Account	<b>\$49,689.02</b>
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## MSDW Trust Account

Equity	\$50,532.94
Value	\$96,290.62
Mid Cap Growth	\$32,103.03
Mid Cap Growth II	\$14,306.57
Mid Cap Value	\$105,584.66
Small Cap Growth	<u>\$57,044.28</u>

Total Value MSDW Trust Account	<b>\$355,862.10</b>
--------------------------------	---------------------

Vanguard Star Fund	<b>\$34,362.00</b>
--------------------	--------------------

Gabelli Asset Fund	<b>\$59,045.00</b>
--------------------	--------------------

STOCKS

60 Shares Eastman Chemical	\$2,340.00
160 Shares Eastman Kodak	\$4,640.00
130 Shares GM	\$6,240.00
501 Shares IBM	\$61,573.00
440 Shares PNC Fin'l Svcs	\$24,640.00
220 Shares Pep Boys	\$2,725.00
328 Shares Fleet	\$11,972.00
680 Shares Verizon	\$31,960.00
160 Shares Lucent	<u>\$960.00</u>

Total Value Stocks	<b>\$147,050.00</b>
--------------------	---------------------

Total Value	<b>\$646,008.12</b>
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*mm*

DUANE MORRIS

FIRM and AFFILIATE OFFICES

PHILADELPHIA  
NEW YORK  
LONDON  
CHICAGO  
WASHINGTON, DC  
SAN FRANCISCO  
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CHERRY HILL  
NEWARK  
WESTCHESTER  
PRINCETON  
PALM BEACH  
ALLENTOWN  
HOUSTON  
BANGOR

MICHAEL M. BAYLSON  
DIRECT DIAL: 215.979.1150  
E-MAIL: baylson@duanemorris.com  
www.duanemorris.com

January 24, 2002

Mr. George Reynolds  
Committee on Financial Disclosure  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE  
Suite 2-301  
Washington, DC 20544

Dear Mr. Reynolds:

On January 23, 2002, President Bush nominated me for a position on the United States District Court for the Eastern District of Pennsylvania. I am enclosing an original and three copies of my Financial Disclosure Report.

Please call if you have any questions.

Sincerely yours,

*Michael M. Baylson*  
Michael M. Baylson

MMB:lm  
enclosures

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DUANE MORRIS LLP

ONE LIBERTY PLACE PHILADELPHIA, PA 19103-7396

PHONE: 215.979.1000 FAX: 215.979.1020

AO-19 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Final Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Baylson, Michael M.	<b>2. Court or Organization</b> U.S.D.C. Eastern Dist. of PA	<b>3. Date of Report</b> 01/22/2002
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee	<b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date 01/23/1902 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2000 to 01/01/2002
<b>7. Chambers or Office Address</b> Duane Morris LLP One Liberty Place Philadelphia, PA 19103-7396	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. Partner	Duane Morris LLP
2. Partner	Baumrin Partnership
3. Partner	BC Partnership
4. Partner	Greenspan Baylson Partnership
5. Director	Center for Community Interest

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1. _____	Duane Morris and I will reach a written agreement on payment of deferred compensation and return of capital. I will consider a rollover of my (cntd Part 8)
2. _____	
3. _____	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 00-01	Duane Morris LLP	1,586,568
2 00-01	Philadelphia Fertility Institute	spouse-NA
3 00-01	Wyeth	spouse-NA
4 00-01	Organon	spouse-NA

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**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE
1	Ameritrade	Stock Margin Agreement	N
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.				Date of Report 02/22/2002			
<b>VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT				
1 AT&T Wireless Service, Inc.		None	J	T					
2 Avaya Inc.		None	J	T					
3 BellSouth Corp.	A	Dividend	K	T					
4 Conectiv	A	Dividend	K	T					
5 Exxon Mobil Corp.	B	Dividend	L	T					
6 Motorola Inc.	A	Dividend	J	T					
7 Qwest Communications Intn. Inc.		None	J	T					
8 SBC Communications, Inc.	B	Dividend	L	U					
9 Vericon Communications	B	Dividend	L	U					
10 Viacom Inc. Class B		None	J	T					
11 Israel State 15 Yr Dollar Current Income Bond 7th	A	None	J	U					
12 Command Money Fund	A	None	J	T					
13 AT&T Corp.	A	Dividend	J	T					
14 AT&T Wireless Services, Inc.		None	J	T					
15 Avaya Inc.		None	J	T					
16 BP Plc Sponsored ADR	A	Dividend	K	T					
17 Certegy Inc.		None	K	T					
1 Incl/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.		Date of Report 02/22/2002	
<b>VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-F)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT
18 Choicepoint Inc.		None	J	T	
19 Comcast Corp. Class A		None	J	T	
20 Comcast Corp. Class A Special		None	K	T	
21 Compaq Computer Corp.	A	Dividend	J	T	
22 Computone Corp. New		None	J	T	
23 Conoco Inc. Class B	A	Dividend	J	T	
24 Delphi Automotive Systems Corp.	A	Dividend	J	T	
25 DuPont E.I. DeNenours & Co.	A	Dividend	J	T	
26 Eastman Chemical Co.	A	Dividend	J	T	
27 Eastman Kodak Co.	A	Dividend	J	T	
28 Electronic Data Systems Corp.		None	J	T	
29 Equifax Inc.	A	Dividend	K	T	
30 Exelon Corp.	A	Dividend	J	T	
31 EMI Inc.		None	J	T	
32 FleetBoston Financial Corp.	B	Dividend	K	T	
33 General Electric Co.	C	Dividend	M	T	
34 General Motors Corp.	A	Dividend	J	T	
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

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Name of Person Reporting  
Baylson, Michael M.

Date of Report	01/22/2002
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VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
<i>Place "X" after each asset exempt from prior disclosure.</i>						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)					<b>EXEMPT</b>				
35 General Motors Corp. Class H New		None	J	T					
36 Hudson United Bancorp.	A	Dividend	K	T					
37 Inkind Pharmaceutical Co., Inc.		None	J	T					
38 International Business Machines	A	Dividend	M	T					
39 J.P. Morgan Chase & Co. Common New	A	Dividend	K	T					
40 Keycorp. New	A	Dividend	J	T					
41 Lucent Technologies Inc.	A	Dividend	J	T					
42 MBM Services Inc.		None	J	T					
43 Motorola Inc.	A	Dividend	J	T					
44 News Corporation Limited ADR New		None	J	T					
45 PNC Financial Services Corp.	C	Dividend	L	T					
46 Prologis Trust SBI	B	Dividend	K	T					
47 Tele Norte Leste Participacoes ADR		None	J	T					
48 Telecomunicacoes De Sao Paulo Sponsored ADR	A	Dividend	J	T					
49 Telefonica De Espana SA Sponsored ADR		None	J	T					
50 TPI Enterprise, Inc.		None	J	T					
51 Verizon Communications	C	Dividend	L	T					
1 Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

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<b>VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT
52 Wachovia Corp. 2nd	C	Dividend	X	T	
53 Walmart De Mexico SA Sponsored ADR		None	J	T	
54 Western Digital Corp. Del		None	J	T	
55 Mediq Inc. Ser A 13% Cum Preferred		None	J	T	
56 Telecomunicacoes Brasileiras SA Telebras Pr.		None	J	T	
57 Telecomunicacoes Brasileiras SA Spon ADR		None	K	T	
58 Telefonica Data Brasil Holdings Spon ADR		None	J	T	
59 Franklin Mutual Ser Fund Inc.		None	K	T	
60 Mander Funds Inc. Netnet Fund Class C		None	J	T	
61 CMF Money Market Portfolio		None	J	T	
62 Astna Inc. New		None	J	T	
63 Bestnet Communications Inc.		None	J	T	
64 Comcast Corp. Class A		None	J	T	
65 Comcast Corp. Class A Special		None	J	T	
66 Hudson United Bancorp.	A	Dividend	X	T	
67 Menlo Acquisitions Corp.	A	Dividend	X	T	
68 Merck & Co., Inc.	A	Dividend	X	T	
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Saylson, Michael M.		Date of Report 01/22/2002						
<b>VII. Page 5 INVESTMENTS AND TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>										
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period						
		(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
							(2) Date: Month- Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)				EXEMPT						
69 PNC Financial Services Group Inc.	A	Dividend	J	T						
70 Avaya Inc.		None	J	T						
71 Bay View Capital Corp.		None	J	T						
72 Bestnet Communications Corp.		None	J	T						
73 Cendant Corp.		None	K	T						
74 Cisco Systems Inc.		None	J	T						
75 Columbia Labs Inc.		None	K	T						
76 Covad Communications Group		None	J	T						
77 Covalent Group Inc.		None	K	T						
78 Diagnostic Health Services Inc.		None	J	T						
79 Etek Corp.		None	J	T						
80 Inkind Pharmaceutical Co., Inc.		None	J	T						
81 Intel Corp.		None	K	T						
82 Lucent Technologies, Inc.	A	Dividend	J	T						
83 Mediq Inc. Preferred		None	J	T						
84 Mellon Financial Corp.	A	Dividend	J	T						
85 Moyco Technologies Inc.		None	J	T						
<b>1</b> In/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more										
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more										
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated										



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<b>VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT				
86 Nokia Corp. ADR		None	K	T					
87 Oracle Corp.		None	J	T					
88 Pfizer Inc.	A	Dividend	K	T					
89 Qualcomm Communications		None	K	T					
90 Qwest Communications International Inc.		None	J	T					
91 Resource America Inc. Class A Com		None	J	T					
92 Rite Aid Corp.		None	K	T					
93 Safeguard Scientifics Inc.		None	J	T					
94 Sun Microsystems Inc.		None	K	T					
95 Verizon Communications		None	J	T					
96 Worldcom Inc.		None	J	T					
97 Worldcom Inc. MCI Group		None	J	T					
98 AXA		None	J	T					
99 British Telecom	A	Dividend							
100 Conoco Inc.	A	Dividend							
101 Consolidated Edison Inc.	A	Dividend							
102 DuPont E.I. DeNemours & Co.	A	Dividend							
<b>1</b> Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Baylson, Michael M.				Date of Report 01/22/2002				
<b>VII. Page 7 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>										
A. Description of Assets (including trust assets)		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g. buy, sell, partial sale, transfer, redemption)	If not exempt from disclosure			
							(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (If private transaction)
Place "X" after each asset exempt from prior disclosure.										
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)						EXEMPT				
103	Exxon Mobil Corp.		A	Dividend						
104	Exxon Mobil Corp.		A	Dividend						
105	Lucent Technologies Inc.		A	Dividend						
106	Media One Group Inc.			None						
107	Texaco Inc.		A	Dividend						
108	TUX			None						
109	Sun Microsystems Inc.			None						
110	Associates First			None						
111	Ford Motor Co.		A	Dividend						
112	US Air Group			None						
113	Merck & Co., Inc.		A	Dividend						
114	Southdown Inc.		A	Dividend						
115	Aetna Inc. 7.25%			None						
116	Daimler Chrysler AG		A	Dividend						
117	Mas Equity Institutional		D	Interest						
118	Mas Small Cap Value Average Cost		B	Interest						
119	Mas Small Cap Value Average Cost			None						
1 In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000		
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$50,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more		
3 Val Mtd Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market				

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.		Date of Report 02/22/2002	
<b>VII. Page 8 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT
120 Mas Mid Cap Growth	C	Interest			
121 Mas Mid Cap Growth Average Cost		None			
122 Mas Mid Cap Value	A	Interest			
123 Mas Mid Cap Value		None			
124 Daimler Chrysler	A	Dividend			
125 Amuson		None			
126 CSX Corp.	A	Dividend			
127 Canada Southern Petroleum Limited		None			
128 Choicepoint Inc.		None			
129 Easton Corp.	A	Dividend			
130 Easton Corp.	A	Dividend			
131 MEM Services Inc.		None			
132 Smucker Jam Company	A	Dividend			
133 Tele Sudeste Cel		None			
134 Aetna Inc.	A	Dividend			
135 AXA AOR		None			
136 MSDW International Equity Class A		None			
<b>1</b> In/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.		Date of Report 01/22/2002	
<b>VII. Page 9 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 35-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT
137 Government of Israel	C	Interest			
138 Chase Manhattan	A	Dividend			
139 AXA		None			
140 Israel Bonds	A	Interest	J	U	
141 Advanced Reproductive Care		None	J	W	
142 Baumrin et al Partnership		None	K	W	
143 EC Partnership	G	Rent	O	W	
144 Duane Morris & Hecksher, LLP	G	None	N	U	
145 Greenspan-Baylson Partnership	E	Dividend	K	U	
146 IRA - Vanguard Star Fund	C	Dividend	L	T	
147 Duane Morris Schwabb Institutional Large Cap Value	D	Dividend	M	T	
148 Duane Morris Vanguard Growth Equity	D	Dividend	M	T	
149 Duane Morris Sound Shore	D	Dividend	M	T	
150 Duane Morris StoneRidge Small Cap		None	L	T	
151 Duane Morris First Eagle SoGen Bond Service	E	Dividend	M	T	
152 Duane Morris Blackrock Core Bond Service	B	Interest	M	T	
153 Duane Morris Marbin & Palmer Global Portfolio	D	Interest	L	T	
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.				Date of Report 01/22/2002			
<b>VII. Page 10 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT				
154 Duane Morris Schwab Institutional Large Cap Value		None	N	T					
155 Philadelphia Fertility Institute	G	salary	L	U					
156 Pennsylvania Reproductive Assoc.		None	M	U					
157 Clinton Endocrine Assoc.		None	L	U					
158 Fertility Testing Lab		None	J	U					
159 SupplyForce.Com		None	J	W					
160 Fiberzone.Com		None	J	W					
161 MSDW Equity	D	Dividend	L	T					
162 MSDW Small Cap Value	D	Dividend	L	T					
163 MSDW Mid Cap Growth	D	Dividend	L	T					
164 MSDW Cash Reserve	A	Interest	J	T					
165 MSDW Cap Value	D	Dividend	L	T					
166 Vanguard Prime Money Market Fund	A	Interest	J	T					
167 Vanguard Prime Money Market Fund	A	Interest	J	T					
168 Vanguard High Yield Corp. Fund	A	Interest	J	T					
169 Brandywine Mutual Fund	G	Dividend	N	T					
170 MSDW UGMA Equity	B	Dividend	J	T					
1 Incl/Gain Codes: A=\$1,000 or less    B=\$1,001-\$2,500    C=\$2,501-\$5,000    D=\$5,001-\$15,000    E=\$15,001-\$50,000 (Col. B1, D4)    F=\$50,001-\$100,000    G=\$100,001-\$1,000,000    H1=\$1,000,001-\$5,000,000    H2=\$5,000,001 or more									
2 Val Codes: J=\$15,000 or less    K=\$15,001-\$50,000    L=\$50,001-\$100,000    M=\$100,001-\$250,000    N=\$250,001-\$500,000 (Col. C1, D3)    O=\$500,001-\$1,000,000    P1=\$1,000,001-\$5,000,000    P2=\$5,000,001-\$25,000,000    P3=\$25,000,001-\$50,000,000    P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal    R=Cost (real estate only)    S=Assessment    T=Cash/Market (Col. C2)    U=Book Value    V=Other    W=Estimated									

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.		Date of Report 01/22/2002	
<b>VII. Page 11 INVESTMENTS AND TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
<input type="checkbox"/> NONE (No reportable income/assets, or transactions.)					EXEMPT
171 MSDW UGMA Small Cap Growth	B	Dividend	J	T	
172 MSDW UGMA International Equity A	A	Dividend	J	T	
173 MSDW Trust Equity		None	K	T	
174 MSDW Trust Value		None	H	T	
175 MSEW Trust Mid Cap Growth		None	K	T	
176 MSEW Trust Mid Cap Growth II		None	K	T	
177 MSEW Trust Mid Cap Value		None	L	T	
178 MSEW Trust Small Cap Growth		None	L	T	
179 Vanguard Windsor II Fund	A	Dividend	J	T	
180 Vanguard Star Fund	A	Dividend	K	T	
181 AT&T	A	Dividend	J	T	
182 Eastman Chemical	A	Dividend	J	T	
183 Eastman Kodak	A	Dividend	J	T	
184 IBM	A	Dividend	J	T	
185 PNC Financial Services	B	Dividend	K	T	
186 Pep Boys		None	J	T	
187 Fleet	A	Dividend			

1 Incl/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Baylson, Michael M.				Date of Report 01/22/2002			
<b>VII. Page 12 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, margin, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-F)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					EXEMPT				
188 Verizon	B	Dividend	K	T					
189 Lucent	A	Dividend	J	T					
190 MSDW UGMA Equity	B	Dividend	J	T					
191 MSDW UGMA Small Cap Value	B	Dividend	J	T					
192 MSDW UGMA Mid Cap Growth	B	Dividend	K	T					
193 MSDW UGMA International Equity A	A	Dividend	J	T					
194 MSDW Trust Equity		None	K	T					
195 MSDW Trust Value		None	L	T					
196 MSDW Trust Mid Cap Growth		None	K	T					
197 MSDW Trust Mid Cap Growth II		None	J	T					
198 MSDW Trust Mid Cap Value		None	L	T					
199 MSDW Trust Small Cap Growth		None	L	T					
200 Vanguard Star Fund	A	Dividend	K	T					
201 Eastman Chemical	A	Dividend	J	T					
202 Eastman Kodak	A	Dividend	J	T					
203 General Motors	A	Dividend	J	T					
204 IBM	A	Dividend	J	T					
<b>1 Inc/Corp Codes:</b> A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more									
<b>2 Val Codes:</b> J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more)									
<b>3 Val Mth Codes:</b> Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Baylson, Michael M.

Date of Report  
01/22/2002

VII. Page 13 INVESTMENTS and TRUSTS-- income, value, transactions *(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)		B. Income during reporting period	C. Gross value at end of reporting period		D. Transactions during reporting period						
					(1) Type (e.g., buy, sell, partial sale, merger, redemption)			If not exempt from disclosure			
								(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
Place "(X)" after each asset except from prior disclosure.		(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)						
	NONE (No reportable income, assets, or transactions.)					EXEMPT					
205	PNC Financial Services	A	Dividend	K	T						
206	Pep Boys		None	J	T						
207	Fleet	A	Dividend	K	T						
208	Verizon	B	Dividend	K	T						
209	Lucent	A	Dividend	J	T						
210	MSDW Equity	D	Dividend	L	T						
211	MSDW Value	D	Dividend	L	T						
212	MSDW Small Cap Value	D	Dividend	L	T						
213	Gabelli Account	D	Dividend	M	T						
214	Great Western Account	B	Dividend	M	T						
215	Brandywine Mutual Fund	E	Dividend	O	T						
216	PFI Profit Sharing	B	Dividend		T						
217	Telecomunicacoes Brasileiras		None	J	T						
218	Bay View Capital		None	J	T						
219	Nokia		None	J	T						
220	Inkline		None	J	T						
221	Cendant		None	K	T						
1 Inet/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000			
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more			
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market					



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**VII. Page 14 INVESTMENTS and TRUSTS -- Income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "XJ" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date, Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT				
222 Aetna		None	J	T					
223 Rohn & Haas		None	J	T					
224 Disney		None	J	T					
225 Nokia		None	K	T					
226 Intel		None	J	T					
227 Sun		None	J	T					
228 Honeywell	A	Dividend	J	T					
229									
230									
231									
232									
233									
234									
235									
236									
237									
238									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Baylson, Michael M.	01/22/2002

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

PART 2: Parties and Terms re: Duane Morr, cntd ...self-funded pension plan and 401(k) to a non-Duane Morris administrator.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Partner	Greenspan Baylson Partnership
5	Director	Center for Community Interest

## PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	00-01	Albert Einstein Hospital spouse-NA	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

Date

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator KOHL. Thank you, and we welcome your family members. Judge Griesbach?

**STATEMENT OF WILLIAM C. GRIESBACH, TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF WISCONSIN**

Judge GRIESBACH. Thank you, Mr. Chairman. I also wish to thank you for holding this hearing. I also thank you for the very kind words.

My family members that I would like to introduce include my wife, Joanne; my daughters, Elisa, Rachel and Maryanne. My daughter, Katie, was unable to be here. My niece, Maggie, is here. My brother, John, is here to represent my parents and my 11 brothers and sisters. I felt it would not be fair to take over the hearing room, so he is the only sibling I brought. And of course, I would like to also introduce my friend and colleague, Judge Don Zuidmulder, from Brown County.

[The biographical information of Judge Griesbach follows:]

ORIGINAL

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
William Charles Griesbach
2. **Position:** State the position for which you have been nominated.  
  
United States District Court Judge, Eastern District of Wisconsin
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Brown County Courthouse  
100 S. Jefferson St.  
P.O. Box 23600  
Green Bay, WI 54305-3600  
(920) 448-4116
4. **Birthplace:** State date and place of birth.  
  
Milwaukee, Wisconsin; January 24, 1954
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
I am married to Joanne M. Griesbach, nee, Ersinghaus. Joanne teaches part-time at Notre Dame Academy, 610 Maryhill Dr., Green Bay, WI 54303-2092, and also teaches a class for adults at St. Bernard Parish, 2040 Hillside La., Green Bay, WI 54302. We have 4 children, 3 of whom are legally dependent.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
Marquette University Law School, August of 1976 - May of 1979. Juris Doctorate  
Marquette University, August of 1972 - May of 1976. Bachelors Degree
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college,

whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

#### EMPLOYMENT

1. 1995 to present: State of Wisconsin, Circuit Court Judge for Brown County, Br. IV, 100 S. Jefferson St., Green Bay, WI 54305.
2. 1987-1995: Assistant District Attorney for Brown County, 300 E. Walnut St., P.O. Box 23600, Green Bay, WI 54305-3600.
3. 1982-1987: Attorney for Liebmann, Conway, Olejniczak & Jerry, S.C., 231 S. Adams St., P.O. Box 23200, Green Bay, WI 54305-3200.
4. 1980-1982: Staff Attorney for the United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn St., Chicago, IL 60604.
5. 1979-1980: Law Clerk for The Honorable Bruce F. Beilfuss, Chief Justice Wisconsin Supreme Court, 16 E. State Capitol, Madison, WI 53701.
6. 1978-1979: Intern for Milwaukee County District Attorney, Juvenile Court Division, 10201 Watertown Plank Rd., Wauwatosa, WI 54226.
7. 1978: Part-time law clerk for Catholic League for Religious and Civil Rights, 1100 W. Wells St., Milwaukee, WI 53233.
8. 1977-1978: Part-time law clerk for Atty William C. Gleisner, III, 4230 N. Oakland Ave., Milwaukee, WI 53211.
9. 1976: Night manager for Downtown YMCA, 915 W. Wisconsin Ave., Milwaukee, WI 53233.

#### OTHER ORGANIZATIONS

1. 2001 to present: Member of Board of Directors for Wisconsin Family Ties, 16 N. Carroll St., Madison, WI 53703, a nonprofit organization that provides information and support to families with children that have mental, emotional, and behavioral disorders.
2. 1989-1990: Member of the Board of Directors of Family Violence Center, P.O. Box 727, Green Bay, WI 54305-0727, a nonprofit organization that provides information and services to victims of domestic violence.
3. 1986-1990: Member of Board of Directors of Legal Services of Northeast Wisconsin, 201 W. Walnut, Green Bay, WI 54303, a nonprofit organization that provides legal services for the poor.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the U.S. Military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

1976, Phi Beta Kappa; Alpha Sigma Nu (Jesuit Honor Society), Francis X. Boden Award (outstanding philosophy major)

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

1979 to present: Wisconsin Bar Association;  
 1982 to present: Brown County Bar Association, President, 1995-96;  
 1996 to present: member of Judicial Education Committee for Wisconsin Judiciary;

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Upon graduation from law school in May, 1979, I became a member of the Wisconsin Bar and was admitted to practice before the Wisconsin Supreme Court and the United States District Courts for the Eastern and Western Districts of Wisconsin. In 1982, I was also admitted to practice before the United States Court of Appeals for the Seventh Circuit. To my knowledge, there have been no lapses in membership.

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Board of Directors of Legal Services of Northeast Wisconsin, Board of Directors of Family Violence Center, Board of Directors of Wisconsin Family Ties. None of the above organizations discriminate on the basis of race, sex or religious beliefs. I am also a member of my local parish's chapter of the Knights of Columbus, a Catholic fraternal charitable organization that raises funds for the parish and other charitable organizations, such as Salvation Army and the Association for Retarded Citizens.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

I was the judicial commentator to one or two chapters of a Wisconsin Bar Continuing Legal Education publication entitled *Wisconsin Trial Practice*. I also was on the faculty for the 2000 Civil Law Seminar sponsored by the Wisconsin Supreme Court Office of Judicial Education at Stevens Point, Wisconsin on November 15-17, 2000. I gave a presentation with Brown County Judge Donald R. Zuidmulder on the topic entitled "Third-Party Payments In Tort Actions: Subrogation and the Collateral Source Rule." Copies of my brief commentary and the outline for this presentation are provided herewith. I have also spoken extemporaneously on occasion before civic organizations, retirement groups and school classes on topics such as the courts, drug abuse, juvenile crime, etc. These were not in written or videotaped form, and there were no accounts in the press.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before Congress, or any of its committees or subcommittees.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

I believe my health is excellent, and my last physical examination was in December, 2001.

16. **Citations:** If you are or have been a judge, provide:

A. a short summary and citations for the ten (10) most significant opinions you have written.

- 1) City of Green Bay v. Blackledge, 97 CV 612. In this decision I held that a Green Bay municipal ordinance prohibiting nude dancing was partially invalid under state law. When the City elected not to appeal and dismissed several citations, I issued a Final Decision reaffirming and further explaining my earlier conclusion. The Final decision also describes the role of the court in deciding questions of law.
- 2) Nettie N. v. Community Adoption Center, 97 TP 8, 9; This case involved the right of Grandparents to visit grandchildren after a petition to terminate the parental rights of the natural parents had been granted, but before the grandchildren had been adopted. I denied the petition of the grandparent seeking visitation.
- 3) Titletown Realty v. TTSS&C, 98 CV 689; In this decision, I denied a

motion for a preliminary injunction to enjoin the defendant from using the name "Titledown Realty" in connection with its business. The plaintiff had asserted claims for common law trade name infringement, unfair competition and deceptive trade practices. I held that the plaintiff had failed to establish a right to preliminary relief.

- 4) Wisconsin Patients Compensation Fund v. Physicians Insurance of Wisconsin, 96 CV 244; This was a decision denying cross motions for summary judgment in an excess verdict bad faith claim arising out of a medical malpractice action. The case proceeded to trial and the plaintiff prevailed. On appeal, the judgment was affirmed, except for part relating to attorneys' fees.
- 5) Wolfe v. Chaca, 97 CV 305; The issue addressed in this decision is the availability of the defense of contributory negligence for failure of the decedent to wear a motorcycle helmet in a wrongful death action. I held that the defense was not available under Wisconsin law.
- 6) Christopherson v. Green Bay Press Gazette, 99 CV 1418; This decision addressed the right of a local newspaper to obtain personnel records relating to allegations of theft by fraud by a governmental employee under Wisconsin's "Open Records" law. I granted the request with some limitations.
- 7) Emergency Physicians, Ltd., v. Infinity Health Care, et al., 99 CV 352; An emergency physician group, whose contract with local hospitals was not renewed, sued the replacement group that was attempting to hire its physician assistants (PAs) to continue working at the same hospitals. Plaintiff asserted claims of tortious interference with contract and civil conspiracy. In this decision, I held that the non-compete provisions of the PAs' contracts were invalid and unenforceable under Wisconsin law and granted the defendants' motion for partial summary judgment.
- 8) Digicorp v. Ameritech, 99 CV 919; This decision on motions for summary judgment addresses various claims for misrepresentation and breach of implied duty of good faith in the context of a distributorship agreement between a telecommunications provider, one of its distributors and a third vendor. The issues addressed include whether a failure to disclose constitutes actionable misrepresentation and the applicability of the economic loss doctrine to claims of fraud. The case proceeded to trial and the plaintiff prevailed. The case is presently on appeal.
- 9) State v. Long, 01 CT 486; This case involves the application of Wisconsin's law prohibiting Operating A Motor Vehicle With A Prohibited Alcohol Concentration (PAC) to persons with pending charges for similar



conduct. I held that a person's PAC is dependent upon the number of prior convictions at the time the offense is alleged to occur; not at the time of trial. The State elected not to appeal.

- 10) Patrickus v. Patrickus, 94 FA 602; This was a family law case that addressed the authority of the court to reduce maintenance notwithstanding a no-reduction clause in the marital settlement agreement. I held that I had such authority and was affirmed on appeal. The citation for the court of appeals' decision is 2000 WI App 255, 239 Wis.2d 340, 620 N.W.2d 205.

- B. a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

I was reversed in an unpublished opinion by the court of appeals in State v. Lecker, Brown County case number 99 CF 873, in Wisconsin Court of Appeals District III case number 99-331099-3310. I had ruled that a defendant could not be charged with both operating while intoxicated and operating while intoxicated causing great bodily harm for the same incident.

Wisconsin Patients Compensation Fund v. Physicians Insurance Company of Wisconsin, Brown County case number 96 CV 244, Court of Appeals District III case number 00-0505, was a bad faith claim arising out of a medical malpractice case. The judgment was substantially affirmed. A part of the judgment relating to the award of attorney's fees was reversed. This decision was also unpublished.

- C. A short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.
  1. State v. Hardrath, 01 CF 218. Decision granting motion to suppress evidence obtained as a result of warrantless entry to private residence. I found the alleged consent given by resident involuntary. The state elected not to appeal.
  2. State v. Niles, 01 CF 923. Decision granting a motion to suppress statements allegedly made by 17-year-old high school student to law enforcement officer. I found the statements were involuntary and obtained in violation of Miranda. The state elected not to appeal.
  3. State v. Johnson, 00CF 883. Decision denying motion to suppress evidence obtained in search of defendant's apartment on ground that police had violated the "rule of announcement." Appeal may be pending.
  4. State v. Nelson, 00 CF 44. Decision denying in part motion to suppress identification evidence on due process grounds and partially granting motion to

suppress statements on Miranda grounds. Defendant eventually plead no contest. No appellate review as of yet.

5. State v. Wos, 98 CV 71. Decision granting a motion for post-conviction relief on ground that defendant's right to testify was violated. State appealed and Court of Appeals affirmed in unpublished opinion.
6. State v. Lesperance, 99 CF 13. Decision on motions in limine regarding admissibility of out-of-court statements of child under 6<sup>th</sup> Amendment Confrontation Clause. Defendant eventually plead no contest and no appeal was filed to my knowledge.
7. State v. Thompson, 00 CM 1220. Decision denying motion to suppress statement on ground of Miranda violation. Defendant plead and no appeal filed.
8. In the Interest of M.P.K., 97 JV 32. Decision granting motion to suppress statements made to law enforcement on grounds of voluntariness and Miranda. No appeal taken.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Copies of each of the above decisions are being provided.

17. **Public Office, Political Activities and Affiliations:**

- A. List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I was appointed to the position of assistant district attorney by Brown County District Attorney, now Judge, Peter J. Naze. I have not been an unsuccessful candidate for office.

- B. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position in a political campaign. In approximately 1992, I helped a friend distribute campaign literature for Governor Tommy Thompson on an afternoon.

18. **Legal Career:** Please answer each part separately.

A. Describe chronologically your law practice and legal experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

Upon graduation from law school, I served as law clerk to Honorable Bruce F. Beilfuss, Chief Justice of the Wisconsin Supreme Court, 16 E. State Capitol, Madison, WI 54701, for the 1979-80 term. I then served a two-year term as a staff attorney for the U.S. Court of Appeals for the 7<sup>th</sup> Circuit, 219 S. Dearborn St., Chicago, IL 60604. I was hired for that position by The Honorable Thomas Fairchild but, as a staff attorney, I worked for all of the judges on the court.

2. whether you practiced alone, and if so, the addresses and dates;

I have never been a sole practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Upon completion of my term, I moved to Green Bay and took a position with the law firm of Liebmann, Conway, Olejniczak & Jerry, S.C., 231 S. Adams St., Green Bay, WI 54301, and worked there as an attorney, doing primarily civil litigation, from August of 1982 until February of 1987. I also did appellate work. In February of 1987, I was hired as an assistant district attorney for Brown County, 300 E. Walnut St., Green Bay, WI 54301, and continued there until I was appointed to the bench in November of 1995.

B. 1. Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

As a law clerk first for the State Supreme Court and then at the 7<sup>th</sup> Circuit, I assisted in the process of reviewing trial court rulings, and then researching and writing appellate court decisions. While in private practice, I worked primarily in civil litigation, doing both plaintiff and defense work in personal injury, construction, civil rights, employment and commercial cases. As an assistant district attorney, I started out handling juvenile matters, including delinquency, CHIPS (children in need of protection and services) and termination of parental rights. I later moved on to adult misdemeanor and felony matters, including homicides, robberies, sexual assaults, burglaries, and drug offenses.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

For the last nine years that I was a practicing attorney, my client was the People of the State of Wisconsin and I specialized in the area of criminal law. While in private practice, I represented both individuals and companies, including insurance companies. The law firm I worked for also encouraged attorneys to take pro bono referrals from Legal Services of Northeast Wisconsin, and I handled several cases of that kind.

- C. 1. Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an assistant district attorney, I appeared in court almost every day on matters ranging from initial appearances to jury trials and sentencings, and everything in between. While in civil practice my court appearances were common, but certainly less frequent.

2. Indicate the percentage of these appearances in

- a. federal courts;

While I was in private practice, perhaps 2-5% of my court appearances were in federal court.

- b. state courts of record;

As an assistant district attorney, all of my appearances were in state court, and most were when I was in private practice.

- c. other courts

Not applicable.

3. Indicate the percentage of these appearances in:

- a. civil proceedings; **20%**

- b. criminal proceedings; **80%**

4. State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

60-70 cases; I was sole counsel on perhaps 90%

5. Indicate the percentage of these trials that were decided by a jury.

90%

D. Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not appeared before the U.S. Supreme Court.

E. Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in private practice, I handled several such cases, but I cannot recall the details and do not have access to records. I handled at least one immigration matter and a few divorces on a *pro bono* basis. As an assistant district attorney, I was unable to handle such cases. I served on the Board of Directors for Legal Services of Northeast Wisconsin until approximately 1988 or 1989.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- A. the citations, if the cases were reported, and the docket number and date in unreported;
- B. a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- C. the party or parties whom you represented; and
- D. describe in detail the nature of your participation in the litigation and the final disposition of the case.

1) a. M.R.I. v. Dow Chemical Co. et al., Brown County Case No. 81 CV

1710;

- b. This case involved a suit over the construction of a commercial bank building in Green Bay. A mortar additive used in the construction of brick panels was alleged to have caused rusting of metal reinforcements, thereby causing the panels to crack. Plaintiff sued Dow Chemical Company, the manufacturer of the mortar additive, and all the parties involved in the construction of the building e.g., architect, engineer, general contractor, mason, etc., alleging negligence, product liability, breach of contract and various other theories of recovery.
  - c. I represented Armin DeGelleke, the engineer hired by the mason to design the panels, throughout the pretrial stages of the proceeding. This meant primarily discovery matters, including depositions, interrogatories and document production. Dow Chemical had developed the product in the late 1940's or '50's, and there were allegations that it had knowledge of its corrosive qualities early on, but failed to disclose them. Discovery involved review of thousands of documents concerning the development, testing and marketing of the product, as well as reports and investigations of similar problems on other buildings around the country. It also involved numerous depositions of expert and fact witnesses. The case settled the week before trial was to commence.
  - d. As best I can recall, my representation lasted from 1982 to 1984.
  - e. The case was venued in Brown County, but presided over by Marinette County Circuit Court Judge Charles Heath.
  - f. Co-counsel was Atty. Gregory B. Conway, P.O. Box 23200, Green Bay, WI 54305-3200, tele. No. (920) 437-0476. I don't recall the names of the attorneys for all of the parties. Those I do recall are: Atty. John Thompson, P.O. Box 22248, Green Bay, WI 54305-2248, tele. No. (920) 435-3734; Atty. Warren Wanezek, P.O. Box 22250, Green Bay, WI 54305-2250; Atty. John Swietlik, P.O. Box 44200, Milwaukee, WI 53214-7200, tele. No. (414) 257-1055; and Atty Wayne Siesennop, 200 Jefferson St., Milwaukee, WI 53202, (414) 223-7900.
- 2)
- a. Perry v. Marinette County, 794 F.2d 279 (7<sup>th</sup> Cir. 1986);
  - b. This was a civil rights action against the Marinette County Sheriff by a former deputy who was discharged after running for sheriff's position. The claim was that discharge was in retaliation for constitutionally protected activity.
  - c. I represented the plaintiff, Michael Perry. I drafted the complaint, conducted discovery and pretrial motions, and ultimately tried the case to a jury. The jury returned a verdict in favor of the plaintiff in the amount of \$82,000, and attorney's fees were awarded separately. The judgment was affirmed on appeal.
  - d. My representation was from 1985-86.

- e. The case was tried in the United States District Court for the Eastern District of Wisconsin before The Honorable John Reynolds.
  - f. Co-counsel was Atty. Ralph Tease, 314 S. Madison, Green Bay, WI 54301, (920) 437-0900. The defendants were represented by Atty. James Hanley, 330 E. Kilbourn, Milwaukee, WI 53202, no tele. listing.
- 2) a. Desotelle v. Continental Casualty Co., 136 Wis.2d 13, 400 N.W.2d 524 (Ct.App. 1986)
- b. This was a civil rights action against Brown County to recover for damages caused by a deputy sheriff who sexually assaulted a young woman. The county was dismissed from the federal court action before trial. The plaintiff recovered a verdict against the deputy and brought suit in state court against the county and its insurer.
  - c. I represented the county and its insurer. I was sole counsel for the county and its insurer both in the federal and state court proceedings. The case was tried to a jury in state court on the issue of whether the deputy was within the scope of his employment. The jury found in favor of my clients and the judgment was affirmed on appeal.
  - d. The representation lasted from 1983 through 1986.
  - e. The trial in state court was in Branch I of the Circuit Court for Brown County, and Judge Richard Greenwood presided.
  - f. The plaintiff was represented by Atty. John Evans, 140 S. Madison St., Green Bay, WI 54302, tele. no. (920) 435-7744. The deputy was represented by Atty. R. Paul Mohr, deceased.
- 4) a. State v. Huisman, 89 CF 406
- b. A seventeen-year-old juvenile was charged with the stabbing/strangulation death of a high school classmate. The primary issues were the admissibility of a taped confession and an insanity defense. The case was featured on the television show "48 Hours."
  - c. I represented the State. I handled juvenile court waiver proceedings, preliminary hearing and pretrial matters. I tried the case with District Attorney John Zakowski, P.O.Box 23600, Green Bay, WI 54305-3600, tele. no. (920) 448-4190. The defendant was found guilty.
  - d. My representation was in 1989-90.
  - e. The case was tried in Brown County Circuit Court before Judge N. Patrick Crooks.
  - f. Defense counsel was Atty. Royce Finne, P.O. Box 1863, Green Bay, WI 54305-1863, tele. no. (920) 432-8677.
- 5) a. State v. Rickman, 90 CF 352.
- b. Defendant was charged with 1<sup>st</sup> degree murder of his wife who had disappeared ten years earlier. Her body was never found. Defendant had been found not guilty by reason of insanity for the shooting deaths

- of 2 men in the early 1960's. The case was made into a T.V. movie.
- c. I represented the State, along with ADA Patrick Hitt, P.O. Box 23600, Green Bay, WI 54305-3600, tele. no. (920) 448-4190.
  - d. The case was tried to a jury in 1991, the defendant was convicted and the judgment was affirmed on appeal in an unpublished decision.
  - e. The case was tried before Judge Richard Greenwood in Brown County Circuit Court.
  - f. The Defendant was represented by Attys. Owen Monfils, P.O. Box 1251, Green Bay, WI 54305-1251, tele. no. (920) 435-5264, and Eric Stearn, no longer practicing.
- 6) a. State v. Heinz, 90 CF 348;
- b. This was a criminal prosecution for sexual assault, burglary, false imprisonment, and battery. The case was significant because it was one of the first in the area to use DNA evidence to identify the perpetrator.
  - c. I was sole counsel for the State.
  - d. The case was tried to a jury in Brown County Circuit Court before Judge Richard Greenwood in 1991.
  - e. Defense counsel was Atty. Robert Nichols, 1345 W. Mason St., Green Bay, WI 54303-2049, no tele. listing.
- 7) a. State v. Stevens, 181 Wis.2d 410, 511 N.W.2d 591 (1994), cert. denied, 515 U.S. 1102 (1995).
- b. This was a drug case. The defendant was charged with delivery of cocaine and possession with intent to deliver. He successfully moved in the trial court to suppress the evidence on the ground that the police had not followed the "rule of announcement" in executing the search warrant. The case is significant in that, on appeal from the decision granting the motion to suppress, the Wisconsin Supreme Court adopted a blanket exception to the "rule of announcement" in felony drug cases. The United States Supreme Court later ruled that blanket exception for all felony drug cases was too broad and therefore unconstitutional in Richards v. Wisconsin, 520 U.S. 385 (1997).
  - c. I was sole counsel at the trial stage for the State.
  - d. The trial court proceedings were before Judge Peter J. Naze in Brown County Circuit Court in 1992.
  - e. Defense counsel was Atty. Henry Schultz, 125 S. Jefferson St., Green Bay, WI 54301-4500, tele. no. (920) 448-5433.
- 8) a. State v. Terry Anderson, 93 CF 203;
- b. Anderson was charged and convicted of multiple counts of securities fraud, theft and forgery. He was convicted after a week-long jury trial.
  - c. I represented the State and tried the case to a jury before Judge Peter J. Naze in Brown County Circuit Court.
  - d. The case was tried in 1993 and is unusual in that it is a state



prosecution for securities fraud.

- e. Defense Counsel was Atty. Owen Mofils, see above.

- 9) a. State v. Austin, 94 CF 193;  
 b. This was a 1<sup>st</sup> degree intentional homicide case in which a father was charged with shooting his own child and trying to make it look like a drive-by shooting.  
 c. I represented the State along with ADA Lawrence Lassee, P.O. Box 23600, Green Bay, WI 54305-3600, (920) 448-4190.  
 d. The case was tried in Brown County Circuit Court to a jury before Judge Peter Naze and the defendant was convicted.  
 e. Defense counsel were Attys. Michael Hanna and William Fitzgerald, 125 S. Jefferson, Green Bay, WI 54301, tele. no. (920) 448-5433.
- 10) a. State v. Kutska, et al., 95 CF 238;  
 b. Six employees of a Green Bay paper mill were charged with the murder of a co-worker whose body was found in a vat after he reported one of the six to the company for theft of an extension cord. All six were tried together in one of the longest criminal jury trials in Brown County history. I represented the State, along with District Attorney John Zakowski and ADAs Lawrence Lassee, and Special Prosecutor Tammy Hock. All six defendants were found guilty in Brown County Circuit Court and sentenced to life in prison. The convictions were affirmed on appeal and the Wisconsin Supreme Court denied review. One of the six has since been released on federal habeas corpus.  
 c. The case was tried before Outagamie County Judge James Bayorgean in October of 1995.  
 d. Defense counsel included: Attys. Royce Finne, P.O. Box 1863, Green Bay, WI 54305-1863, tele. no. (920) 432-8677; Timothy Pedretti, P.O. Box 1776, Green Bay, WI 54305-1776, tele. no. (920) 432-9399; Robert Parent, 414 Walnut St., Green Bay, WI 54301; tele. no. (920) 437-3580; Gerald Boyle, 2051 W. Wisconsin Ave., Milwaukee, WI 53233, tele. no. (414) 343-3300; Nila Robinson, P.O. Box 5159, Appleton, WI 54913-5159, tele. no. (920) 831-0300; and Eric Stearn, no longer in practice.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party

in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

None.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I do not foresee any conflicts of interest arising. If a conflict does arise, I will take whatever steps are necessary to eliminate it. If it cannot be eliminated, then I will recuse myself from hearing the case.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached Financial Disclosure Statement.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached Net Worth Statement.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (1) If so, did it recommend your nomination?

Yes.

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted a lengthy application, similar to this one, to the Wisconsin State Bar Federal Nominating Commission. I was then interviewed by the Commission and selected as one of five finalists. I was then interviewed by Senators Herb Kohl and Russell Feingold, and by Congressman James Sensenbrenner. I was then notified that I was one of three finalists and asked to come to the White House, where I was interviewed by White House Counsel Alberto Gonzales. I have also been interviewed by an agent of the FBI and Assistant U.S. Attorney Michael Elston.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

## AFFIDAVIT

I, William C. Griesbach, being duly sworn, hereby state that I have read and signed the foregoing Questionnaire for Nominees Before the Committee on the Judiciary and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

William C. Griesbach

SUBSCRIBED AND SWORN TO before me this 26<sup>th</sup> day of January, 2022

Myra L. Fulk  
Notary Public  
Commission Expires 5-03-24

AG-10 (w)  
 Rev. 1/2000

**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**

 Report required by the Ethics in  
 Government Act of 1978, as amended  
 (5 U.S.C. App. 4, Sec. 161-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Griesbach, William C.		<b>2. Court or Organization</b> District Court, E.D. Wis.	<b>3. Date of Report</b> 01/26/2002
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee		<b>5. Report Type (check type)</b> X Nomination, Date 01/23/2002 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2001 to 01/01/2002
<b>7. Chambers or Office Address</b> Brown County Courthouse P.O. Box 23600 Green Bay, WI 54305-3600		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b> Reviewing Officer _____ Date _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1. Director	Wisconsin Family Ties
2.	
3.	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1. 2001	Wisconsin Retirement System
2. 2001	Wisconsin Deferred Compensation Program
3.	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (You, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1. 2001	State Of Wisconsin	105,000
2. 2001	Notre Dame Academy	
3. 2001	St. Bernard Parish	
4. 2000	State of Wisconsin	104,000

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Griesbach, William C.	01/26/2002

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**

(Includes those to spouse and dependent children. See pp. 25-26 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

**VI. LIABILITIES**

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

\* VAL. CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Griesbach, William C.	Date of Report 01/26/2002
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**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions** *(Includes those of spouse and dependent children. See pp. 36-34 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
1 MSI Bank (CD)	A	Interest	J	T	exempt				
2 Putnam Gobel Growth Fund (IRA)		None	J	T	exempt				
3 Putnam New Op's Fund (IRA)		None	J	T	exempt				
4 Wisconsin Deferred Comp Prog.									
5 - Fidelity Contrafund		None	J	T	exempt				
6 - Janus Fund		None	J	T	exempt				
7 - DFA US Micro Cap Port		None	J	T	exempt				
8 - Vanguard LT Corporate Fund	A	Interest	J	T	exempt				
9 - Stable Value Fund	A	Interest	J	T	exempt				
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 O=\$500,001-\$1,000,000	L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$500,000,001 or more
3 Val Mth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Griesbach, William C.	Date of Report 01/26/2002
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Griesbach, William C.	Date of Report 01/26/2002
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

William C. GriesbachDate 1-26-02

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$ 6,050	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule		Notes payable to relatives	
Unlisted securities-add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	\$110,123
Real estate owned-add schedule	160,200	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	43,600	Student Loan for child	5,000
Cash value-life insurance			
Other assets itemize:			
Wisconsin Deferred Compensation Plan	16,520		
Wisconsin Retirement System (employee contrib.)	71,142		
Putnam Investment Fund	2,932		
M & I Bank CD	5,767		
		Total liabilities	\$115,123
		Net Worth	191,088
Total Assets	\$306,211	Total liabilities and net worth	\$306,211
CONTINGENT LIABILITIES	None	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provisions for Federal Income Tax			
Other special debt			

Senator KOHL. Thank you, Judge Griesbach, and we welcome you all here. Judge Lancaster?

**STATEMENT OF JOAN E. LANCASTER, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA**

Judge LANCASTER. Good afternoon, and thank you, Mr. Chairman. Thank you for holding the hearing. I am deeply honored to be here.

I am accompanied by my two children, John Lancaster and Claire Lancaster, who are in the back of the room, accompanied by my friend, John Stanoch, and by the Chief Judge of the District of Minnesota, Judge James Rosenbaum.

[The biographical information of Judge Lancaster follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Joan Ericksen Lancaster.  
Former name: Joan Nancy Ericksen
2. **Position:** State the position for which you have been nominated.  
  
U.S. District Court, District of Minnesota
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Minnesota Supreme Court  
Minnesota Judicial Center  
25 Constitution Avenue, #427  
St. Paul, MN 55155  
651 296 2285
4. **Birthplace:** State date and place of birth.  
  
October 11, 1954, St. Paul, Minnesota
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Divorced; two dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
University of Minnesota Law School, Minneapolis, Minnesota, 1978-1981; J.D. *cum laude*, 1981  
Oxford University, Oxford, England, 1975-1976; Special Diploma in Social Studies *with distinction*, 1976  
St. Olaf College, Northfield, Minnesota, 1973-1977; B.A. *magna cum laude* 1977
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

*Associate Justice*, Minnesota Supreme Court, St. Paul, Minnesota, 1998 - present  
*Judge of District Court*, 4th Judicial District (Hennepin County, Minnesota) 1995 - 1998  
*Shareholder* (partner), Leonard, Street and Deinard, Minneapolis, Minnesota, 1993 - 1995  
*Assistant United States attorney*, District of Minnesota, 1983 - 1993  
*Attorney*, LeFevere, Lefler, Kennedy, O'Brien & Drawz, Minneapolis, Minnesota, 1981 - 1983  
*Legal writing instructor, research assistant, computer research instructor*, University of Minnesota Law School, 1979 - 1981  
*Law clerk*, Hvistendahl & Moersch, Northfield, Minnesota, 1980  
*Secretary*, St. Olaf College, Northfield, Minnesota, 1976 - 1978

All services were for pay.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.  
  
No military service.
9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.  
  
Distinguished Service Award, William Mitchell College of Law, 2002  
Distinguished Alumni recognition, University of Minnesota Law School, 2001  
Distinguished Alumni Award, Northfield Sr. High School, 2001  
Special Achievement Award, United States Department of Justice, 1988  
Four Outstanding Performance ratings at United States Attorney's Office, District of Minnesota
10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.  
  
*Chair*, Minnesota Supreme Court Civil Appellate Rules Committee, 1998 - present  
*Chair*, Minnesota Supreme Court Interpreter Advisory Committee, 2001 - present  
*Chair*, Minnesota Supreme Court Civil Commitment Rules Committee, 1998 - 1999  
*Chair*, Minnesota Juvenile Justice Services Task Force, 1999 - present  
*Co-chair*, Governor's Task Force on Fetal Alcohol Syndrome, 1996 - 1998  
*Board member*, Supreme Court Board of Law Examiners, 1995 - 1998  
*Liaison*, Minnesota Supreme Court Child Protection Rules Committee, 1998 - present  
*Board of Directors*, University of Minnesota Law Alumni Association, 2001 - present  
*Board of Directors*, Minnesota Lawyer publication, 2001 - present  
*Board of Directors*, Minnesota State Bar Association Continuing Legal Education (CLE) Board, 1999 - present  
Minnesota State Bar Association, 1981-1984 and 1992 - present  
American Bar Association, 1996 - 1998

Minnesota Women Lawyers, 1981 - present  
 Federal Bar Association, 1983 - 1998  
 Hennepin County Bar Association, 1981-1984 and 1992 - present

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

-Minnesota Supreme Court, October 1981 - present  
 -United States District Court, District of Minnesota, February 1982 - present  
 -United States Court of Appeals, Eighth Circuit, June 17, 1985 - present

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

-Board of Directors, Friends of the Children Foundation, 2000 - present  
 -Warren E. Burger Inn of Court, 1998 - 1999, 2000 - current  
 -No membership in an organization that does or has discriminated on the basis of race, sex, or religion.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

William Mitchell Law Review, Vol. 28, N. 1, 2001 *Whose balance is it, anyway?* Cindy L. Lavorato and The Honorable Joan Ericksen Lancaster.

Bench & Bar of Minnesota, April 2001, *Juvenile Justice in Minnesota: Making a Difference?* Justice Joan Ericksen Lancaster and Cheryl Widder Heilman

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

Not applicable.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Health Excellent. Last physical examination December 4, 2001.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;

1. *Peterson v. Anderberg Construction, Northland Maintenance Corp.*, 586 N.W.2d 269 (Minn. 1998)  
Equitable allocation of liability among sequential employers is permitted under Minnesota workers' compensation liability law.
2. *Gilbertson v. Leininger*, 599 N.W.2d 127 (Minn. 1999)  
Dinner guest brought a personal injury action against hosts seeking recovery for injuries she sustained after an evening of drinking alcoholic beverages. Held that the host did not have a special relationship with the guest such that they had a legal duty to protect her from harm under these circumstances.
3. *In Re the Marriage of: Ronald F. Frauenschuh, Jr. v. Sherrie L. Giese, f/k/a Sherrie L. Frauenschuh*, 599 N.W.2d 153 (Minn. 1999)  
As a matter of statutory interpretation, parties may not contract around statutory endangerment standard applicable to party seeking modification of sole physical custody awards.
4. *HRA v. Adelman, F&D Properties, Naegle Outdoor Advertising*, 590 N.W.2d 327 (Minn. 1999)  
In an eminent domain action, strict compliance with notice requirements of the statute specifying parties entitled to notice of the condemnation commissioner's report is not a jurisdictional prerequisite to appeal from the damages award; condemnation statute is complied with by service of notice of appeal on counsel for property owners.
5. *Jostens, Inc. v. Federated Mutual Ins. Co.*, 612 N.W.2d 878 (Minn. 2000)  
The case clarified a matter of civil appellate procedure concerning certification of questions as important and doubtful such that they are subject to interlocutory appeal.
6. *Paul J. Hagen v. Burmeister & Associates, Inc. v. American Agency, Inc.*, 633 N.W.2d 176 (Minn. 2001)  
This case held, in an action alleging vicarious liability under the Minnesota Uniform Trade Secrets Act, that respondent failed to introduce evidence that its former employee's tortious act was foreseeable; therefore, respondent failed to prove that its former employee acted within the scope of employment with his current employer when the former employee misappropriated trade secrets.

7. *Progressive Specialty Ins. Co. v. Kelly Widness, et al.*, 635 N.W.2d 516 (Minn. 2001)  
Liability coverage for a named insured's child while driving a non-owned vehicle is not mandated by the Minnesota No-Fault Automobile Insurance Act; child is an insured under the Act.
8. *Witso v. Overby*, 627 N.W.2d 63 (Minn. 2001)(dissent)  
This case raised a statutory interpretation question regarding whether a putative but not presumed father may demand blood testing to determine the existence of the father/child relationship.
9. *State v. Pederson*, 600 N.W.2d 451 (Minn. 1999)(dissent)  
My dissent criticizes majority's decision to require public defender to pay for transcripts when defendants are financially able to hire private counsel. "The majority relies on our supervisory powers to announce a rule that is tantamount to an unfunded mandate from this court."
10. *In re Dennis Darol Linehan*, 594 N.W.2d 867 (Minn. 1999)(concur/dissent)  
This case involves interpretation of Minnesota's civil commitment statute. My dissent criticizes the majority for exceeding its statutory interpretation power and reworking a statute that, as written, violates the U.S. Supreme Court's decision in *Kansas v. Hendricks*, 521 U.S. 346 (1997).

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

None.

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

*State ex rel. Morrow v. LeFleur, Commissioner of Corrections*, C7-98-323  
590 N.W.2d 787 (Minn. 1999)

Imposition of disciplinary sanction based on prisoner's refusal to participate in sexual offender treatment did not violate Fifth Amendment privilege against self-incrimination.

*State v. Jamie Lee Aubid*, C4-97-2004  
591 N.W.2d 472 (Minn. 1999)

This pretrial appeal in a first-degree murder case involving testimony of co-conspirators analyzed under the confrontation clause; evidence that is admissible under the catch-all exception to the hearsay rule does not automatically satisfy the requirements of the confrontation clause.

*State v. Andy Leo DeVerney*, C9-98-436  
592 N.W.2d 837 (Minn. 1999)

A due process Batson challenge fails when the state articulates sufficient non-race-based justifications for its preemptory strikes. The constitutional right to

prepare a defense is not violated when a trial court permits an additional aiding and abetting instruction if the additional instruction does not constitute “additional or different offense” and when the defendant’s substantial rights are not prejudiced.

*State v. Risk*, C4-98-1896  
598 N.W.2d 642 (Minn. 1999)

To protect an accused’s rights against compelled self-incrimination under the Minnesota state constitution, when an accused makes an ambiguous or equivocal statement that can reasonably be interpreted as a request for counsel, police must stop all questioning except for narrow questions designed to clarify the accused’s intentions.

*State v. Susan Leroy*, C0-98-1247  
604 N.W.2d 75 (Minn. 1999)

When a mistrial is granted on defendant’s motion after acquittal, double jeopardy principles render the mistrial void. Retrial after an acquittal is barred by the double jeopardy clause of both the Minnesota and United States constitutions.

*State v. Lunair Gerard Britton*, C9-98-968  
604 N.W.2d 84 (Minn. 2000)

Police observation of a person driving a car that has a broken window is not sufficient to support a stop based on suspicion that the vehicle may have been stolen and that the driver has stolen the vehicle.

*State v. Raymond Buster Hunt*, C5-99-72  
615 N.W.2d 294 (Minn. 2000)

The due process clauses of the United States and Minnesota constitutions require that the prosecution disclose to defense the results of a psychological examination finding the state’s key witness incompetent to stand trial.

*State v. Henderson*, C4-99-1276  
620 N.W.2d 688 (Minn. 2001)

Appellant did not establish a prima facie case of racial discrimination under *Batson v. Kentucky*, 476 U.S. 79 (1986), by pointing to questions the prosecutor could have, but did not, ask a juror.

*State v. Crowsbreast*, C8-99-1913  
629 N.W.2d 433 (Minn. 2001)

The United States Constitution requires a unanimous verdict in a criminal case, but United States Supreme Court’s decision in *Richardson v. United States*, 526 U.S. 813 (1999), dealing with continuing criminal enterprises, does not mandate that a jury unanimously agree on which acts comprise a past pattern of domestic abuse under Minnesota’s first-degree domestic abuse homicide statute.



*In the Matter of the Welfare of: M.P.Y., C7-99-2017*

630 N.W.2d 411 (Minn. 2001)

A criminal defendant has a right to testify on his own behalf; thus, the trial court erred in denying defendant the right to testify as a sanction for failing to provide an alibi notice in the absence of exploration of other possible remedies.

*In re Dennis Darol Linehan, C1-95-2022, C3-96-511*

594 N.W.2d 867 (Minn. 1999) (authored concur/dissent)

In dissent, I argued that Minnesota's sex offender civil commitment statute violated *Kansas v. Hendricks*, 521 U.S. 346 (1997), unless the court exceeded its power and effectively rewrote the statute.

*State v. Jay Joseph Grossman, C8-00-459*

636 N.W.2d 545 (Minn. 2001)

The due process clauses of Minnesota and United States constitutions were both violated by a statute that permitted the trial court's finding by a preponderance of evidence to increase a criminal sentence beyond the sentence authorized under the statute supporting the jury's guilty verdict, applying *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

N/A

- (2) whether you practiced alone, and if so, the addresses and dates;

N/A

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

-*Associate Justice*, Minnesota Supreme Court, St. Paul, Minnesota, 1998 - present

-*Judge of District Court*, 4th Judicial District (Hennepin County, Minnesota) 1995 - 1998

-*Shareholder* (partner), Leonard, Street and Deinard, Minneapolis, Minnesota, 1993 - 1995

-*Assistant United States attorney*, District of Minnesota, 1983 - 1993

-*Attorney*, LeFevre, Lefler, Kennedy, O'Brien & Drawz, Minneapolis, Minnesota, 1981 - 1983

-*Legal writing instructor, research assistant, computer research instructor*, University of Minnesota Law School, 1979 - 1981

-*Law clerk*, Hvistendahl & Moersch, Northfield, Minnesota, 1980

-*Secretary*, St. Olaf College, Northfield, Minnesota, 1976 - 1978

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

From 1981 through 1983 I was an associate with the Minneapolis law firm of LeFevre, Lefler, Kennedy, O'Brien & Drawz. Many of my clients were suburban municipalities for whom I did criminal and civil work. I served as Assistant City Attorney, prosecuting criminal cases, for the cities of Crystal and Robbinsdale. In that connection I tried, as sole counsel, approximately 12 jury trials and 40 court trials, all in state court. My civil practice involved attending city council meetings and drafting ordinances. I was bond counsel to many Minnesota cities; most of the bond issues were general-obligation bonds for municipal sewer and water improvements. Approximately 30% of my time was spent in general civil litigation as required by the partners of the firm.

From 1983 through 1993 I was an assistant United States attorney and handled cases exclusively in federal court. From 1983 - 1985 I was primarily assigned to the civil division, representing the federal government in medical malpractice, tort, and insurance actions. I was sole counsel in all civil matters with the exception of one case where I was co-counsel with an attorney from the Department of Agriculture and one from

the Department of Justice in Washington, D.C. From 1985 through 1993 I was primarily assigned to the criminal division. There I prosecuted cases on behalf of the federal government. I tried approximately 20 jury cases in federal court as sole counsel, and four cases as co-counsel, including the first criminal RICO case ever brought in the State of Minnesota. I also briefed and argued my cases to the Eighth Circuit Court of Appeals. In the last year and a half of my time in the office I was responsible for deciding what cases would be accepted by the United States Attorney's Office for prosecution, assigning the cases to attorneys in the office, and overseeing the handling of the cases.

From 1993 through 1995 I was an attorney in private practice and represented clients in criminal and civil matters. I tried one major civil case during that time, a two-month jury trial in state court in Wisconsin (admitted pro hac vice). I was lead counsel in that case, which involved a large fire in Madison, Wisconsin. I represented the architectural firm that designed the building and was successful in obtaining a favorable verdict on behalf of my client. Approximately three-fourths of my time at the firm was spent on civil matters and one-fourth on criminal matters. My work was split about evenly between state and federal court. I also was the hiring partner at the firm.

The most significant of my legal activities that does not appear elsewhere in this form pertains to work with children. For two years I was one of six judges in Hennepin County assigned to hear cases involving child abuse and delinquency. There I helped implement several improvements to the way those important cases were handled, including implementation of nationally recognized best practices protocol for handling child protection cases, and participating in one-judge, one-family innovation. During my time on the juvenile court bench I co-chaired a state-wide task force on Fetal Alcohol Syndrome. That project was successful in raising public awareness of the problem and better handling of affected families in the courts. My work as a district court judge, both in juvenile court and adult civil and criminal cases was recognized by the attorneys who practiced in that court; I received a retention rating of over 95% in the Hennepin County Bar Association poll, including high ratings in the categories of case management skills, demeanor, settlement skills, and substantive criminal and civil knowledge.

My work on children's issues has continued during my time on the Minnesota Supreme Court, where I am liaison to the Court's committee that re-wrote the Child Protection Rules to bring them into compliance with federal and state law. I am also liaison to the Court's Juvenile Delinquency Rules Committee. I undertook a special project to examine the way our courts handle juvenile delinquency matters, chairing the Minnesota Supreme Court Task Force on Juvenile Justices Services. In 2000 I was elected to the Court in a state-wide election. I received the

endorsements of all Minnesota newspapers that endorsed a candidate for the Minnesota Supreme Court. (See provided endorsements.)

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

See 18(b)(1) above.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearance in court varied, describe each such variance, providing dates.

Frequently.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;

75%

- (B) state courts of record;

24%

- (C) other courts.

1%

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;

30%

- (B) criminal proceedings.

70%

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 70 cases; sole or chief counsel in almost all.

- (5) Indicate the percentage of these trials that were decided by a jury.

50%

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

As a judge, I have worked extensively on projects aimed at improving the plight of children in the court system. I am an active member of the Friends of the Children Foundation, whose aim is to provide foster children with the necessities of childhood beyond what is provided by the government, and also to encourage community members to act as guardians ad litem. I spent countless hours working with families affected by fetal alcohol syndrome and fetal alcohol effect, including working with one of the only facilities in the country (Thunderspirit Lodge) that is geared exclusively to the needs of FAS children. During the two years I was in private practice before taking the bench, I was a member of a law firm that is recognized throughout Minnesota for its *pro bono* efforts. We maintained (and the firm still maintains) a *pro bono* legal clinic in a particularly disadvantaged neighborhood of Minneapolis known as the Phillips neighborhood. I also assisted in individual cases for our clinic; for example, helping to rectify environmental problems that arose in a free-food store in the Phillips neighborhood.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

- 1. In 1986 I was co-counsel on the first criminal Racketeer Influenced and Corrupt Organizations Act prosecution in Minnesota. By the time of the appeal, co-counsel had left the United States Attorney's Office; I wrote the brief myself and argued the case to the Eighth Circuit Court of Appeals. *United States v.*

*Kragness, et al.*, 830 F.2d 842 (8th Cir. 1987). Counsel for the defendants included:  
 Ronald I Meshbesh, Meshbesh and Spence, 1616 Park Ave. S., Minneapolis, MN 55404. Telephone number is 612-339-9121.  
 Bruce Hanley, Rider, Bennett Egan & Arundel, 333 S. 7th St., #2000, Minneapolis, MN 55402. Telephone number is 612-340-7951.  
 Trial judge was Hon. Edward J. Devitt, now deceased.

2. *United States v. Roy*, 843 F.2d 305 (8th Cir. 1988) was one of several murder cases I prosecuted on behalf of the United States. In *Roy*, the defendant beheaded his victim with a machete.  
 Opposing counsel: Peter J. Thompson; Thompson & Sicoli, 2520 Park Ave. S., Minneapolis, MN 55404, telephone number 612-871-0708.  
 Trial judge was Honorable Edward J. Devitt, now deceased.
3. I investigated, indicted, and in 1992 resolved by guilty plea and criminal forfeiture of real estate the case of *United States v. Ulrich*, D.Minn. 4-90-CR-107. The offense involved mail fraud and Racketeer Influenced and Corrupt Organizations Act violations. Civil investigation in the parallel case was conducted at the Federal Trade Commission under the supervision of Heather Hipsley, Esq. Her telephone number is 202-326-3285.  
 Opposing counsel was John W. Lundquist; Fredrikson & Byron, 900 Second Ave. S., #1100, Minneapolis, MN 55402. Telephone number is 612-347-7000.  
 Judge was Hon. David Doty, D.Minn., telephone number 612-664-5060.
4. In 1993 I prosecuted an attorney for insider trading and securities fraud. He was found guilty after a jury trial. *United States v. Poindexter*, 3-92-CR-66.  
 Opposing counsel was Mark W. Peterson, Suite 900, 520 Marquette Ave. S., Minneapolis, MN 55402. Telephone number is 612-349-5202.  
 Judge was the Honorable Richard Kyle, Federal District Court, St. Paul, MN, 651-848-1160.
5. In *United States v. Cheatham*, 899 F.2d 747 (8th Cir. 1990) and *United States v. Crosby, et al.*, 917 F.2d 362 (8th Cir. 1990), (decision as to one defendant who fled before trial reversed on issue of trial in absentia, 112 S.Ct. 1261 (1992)), I prosecuted a mail fraud case involving fraudulent sale of investments in Vietnam Memorial memorabilia. (A veterans' park was advertised to be built in South Dakota, but was never built. Gen. Chuck Yeager testified for the Government.) I was sole counsel in the jury trial. Defense counsel included:  
 Charles Hawkins, 2890 Lincoln Centre, 333 S. Seventh St., Minneapolis, MN 55402. Telephone number 612-339-6921.  
 Douglas Altman, 832 Marquette Ave., #1600, Minneapolis, MN 55402.  
 Telephone number is 612-335-3700.  
 Faison Sessoms, 840 Midland Square Bldg., 331 Second Ave. S., Minneapolis, MN 55401. Telephone number 612-344-1505.  
 Judge was The Honorable Donald D. Alsop, District of Minnesota, St. Paul, Minnesota. His telephone number is 651-848-1170.

6. I tried, with co-counsel Andrew M. Luger (now at Greene, Espel, 333 S. 7th St., #1700, Minneapolis, MN 55402, telephone 612-373-0830), *United States v. Blodgett*, 32 F.3d 571 (8th Cir. 1994). This was a mail and wire fraud case involving a \$40,000,000 swindle in the sale of investment securities. Defense counsel were:  
 Ronald I. Meshbesher; Meshbesher and Spence, 1616 Park Ave. S., Minneapolis, MN 55404. Telephone number is 612-339-9121.  
 James M. Gilbert. Telephone number for Mr. Gilbert, now on the Minnesota Supreme Court, is 651-297-5454.  
 Judge was Richard H. Kyle. Telephone number is 651-848-1160.
7. *In re: May 3, 1991 fire at 4309 Cottage Grove Road, Dane County, Wisconsin*, file No. 91-CV-4187 (jury verdict returned May 2, 1994). My client designed a cold-storage warehouse that burned (we claimed from an explosion), causing \$50 million in damage, including the loss of lard, sausages, bacon and butter. Testimony was highly technical, involving fire, electrical, and engineering experts; my client was found by the jury to be not liable. Opposing counsel did not appeal, but some of the essential details of the fire are set out in *United States v. Crown Equipment Corp.*, 85 F.3d 700 (7th Cir. 1996). Principal opposing counsel was Bruce Allman, Thompson, Hine & Flory, 2000 Courthouse Plaza NE, P.O. Box 8801, Dayton, Ohio 45401-8801. I was assisted in the trial by Hal Field of Leonard, Street and Deinard, Minneapolis, Minnesota. His telephone number is 612-335-1500. Case tried before the Honorable Richard J. Callaway, Dane County, Wisconsin Circuit Branch 6.
8. In 1994 I represented a person who caused a traffic fatality and was charged criminally with manslaughter. He pled guilty and was sentenced to two years' imprisonment. Opposing counsel was Bev Benson of the Hennepin County attorney's office, telephone number 612-348-7773. The judge was Kevin S. Burke, Chief Judge of Hennepin County. His telephone number is 612-348-4389.
9. In 1994 I represented an individual in connection with an ongoing federal fraud investigation by a federal grand jury. My client was not indicted. Opposing counsel was Margaret Burns, assistant United States attorney, 300 S. 4th St., Minneapolis, MN 55415. Telephone number is 612-664-5600. Counsel for related corporate targets were:  
 Donald M. Lewis, Halleland, Lewis, Nolan, 220 S 6th St., #600, Minneapolis, MN 55402. Telephone number is 612- 338-1838.  
 Jerry Snider, Faegre & Benson, 90 S. 7th St., #2200, Minneapolis, MN 55402. Telephone number is 612-336-3000.
10. In 1995 I, as sole counsel, represented a meat processing company, Lloyd's Barbeque, in a sexual discrimination lawsuit that was ultimately settled. Opposing counsel was Howard Bolter, Borkon, Ramstead, Mariani, Fishman & Carp, 608 Second Ave. S., Suite 485, Minneapolis, MN 55402. Telephone number is 612-333-7155.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

None.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Divorced by stipulation, May 8, 2001.

Defendant, along with numerous state and federal officials in a lawsuit by a person I had successfully prosecuted for mail fraud (see #6 to Question 19 above). Motion to dismiss granted in an order describing the litigation as baseless, vexatious and harassing.

Involved in a dispute over earnest money in sale of residence, March 1997. Prevailed on motion.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will abide by the code of judicial conduct and any relevant statutes. I have been a judge since 1995 and have experience resolving potential conflicts. I personally maintain a list of my stock holdings. During the time I was married, I recused myself from hearing any case in which my husband's firm was involved.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See financial disclosure report.



25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

Financial Net Worth Statement attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (a) If so, did it recommend your nomination?

Yes.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

A merit selection commission reviewed resumes, including mine, and selected five people for interview by Congressman Jim Ramstad, his staff and the chair of the selection commission. I was one of those interviewed. After that interview, three names were submitted to the White House for interview. My name was submitted, and I was interviewed by members of the White House Counsel's office.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks		2000	Notes payable to banks-secured (1)		6660
U.S. Government securities-add schedule (1)		457	Notes payable to banks-unsecured		
Listed securities-add schedule (2)		13303	Notes payable to relatives		
Unlisted securities-add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		2500
Due from relatives and friends			Unpaid income tax		
Due from others		209408	Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule (2)		350408
Real estate owned-add schedule (3)		537000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property		60000			
Cash value-life insurance					
Other assets itemize: (4)		133775			
(see schedule)					
			Total liabilities		359568
			Net Worth		
Total Assets		956443	Total liabilities and net worth		596875
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)		no
On leases or contracts			Are you defendant in any suits or legal actions?		no
Legal Claims			Have you ever taken bankruptcy?		no
Provision for Federal Income Tax					
Other special debt					

**Assets – schedule**

1. U.S. Government securities: Federated Treasury cash series \$457.66
2. Listed securities:
  - a. Innodata Corp. 1,840 shares @ 3.45 = \$6,348
  - b. Ontrack Data International, Inc. 175 shares @ 6.49 = \$1,135.75
  - c. Photo Control Corp. 750 shares @ 2.20 = \$1,650
  - d. Uroplasty, Inc. 500 shares @ 1.00 = \$500
  - e. A.C.L.N. Ltd. 156 shares @ 26.73 = \$4,169.88
3. Real Estate Owned:  
Assessed value: \$537,000
4. Other assets:
  - a. Minnesota State Deferred Compensation Plan \$50,597.22
  - b. Oppenheimer Funds (IRA) \$18,233.13 as of 9-30-01
  - c. Vanguard Explorer Fund \$12,621.11 as of 9-30-01
  - d. \$1,550 per month on rental property
  - e. State judge's retirement account current refund value \$52,323.61

**Liabilities – schedule**

1. \$20,000 line of credit, credit union. Current balance \$6,660.58
2. Real estate mortgage: \$350,408.53

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2-10 (4-0)  
N 1/2000

**FINANCIAL DISCLOSURE REPORT**  
Nomination Report

P.P.  
Report required by the Ethics in Government Act of 1978, as amended (5 U.S.C. App. 4, Sec. 101-112)

Person Reporting (Last name, first, middle initial) amcarter, Joan E.	2. Court or Organization U. S. District Court-Minnesota	3. Date of Report 01/25/2002
Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Nominee	5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 01/01/2002
Chambers or Office Address 15 Constitution Ave St. Paul, MN 55155	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

**POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Board of Directors	University of Minnesota Law Alumni Association
2 Board of Directors	Friends of the Children Foundation
3 Board of Directors	Minnesota Bar Association CLE Board

**I. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	At retirement I am entitled to Minnesota State Judge Retirement Benefits-current cash value \$52,322.61
2	
3	

**II. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (year, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2001	State of Minnesota, judicial salary	\$114,605.40
2 2000	State of Minnesota, judicial salary	\$110,997.90
3		
4		

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F	NANCIAL DISCLOSURE REPORT	Name of Person Reporting	P
		Lancaster, Joan B.	Date of Report
			01/25/2002

7. REIMBURSEMENTS -- transportation, lodging, food, entertainment.  
*(Includes those to spouse and dependent children. See pp. 15-18 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	NONE	exempt
2		
3		
4		
5		
6		
7		

## V. GIFTS

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	NONE	exempt	
2			
3			

## VI. LIABILITIES

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	Cendant Mortgage	Mortgage on rental property	N
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Lancaster, Joan S.

Date of Report: 01/29/2002

(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions

A. Description of Assets (including trust assets)  <i>Place "(X)" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code (A-J)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
1 US Government Federated Treasury Cash Series	A	Dividend	J	T	exempt				
2 Innodata Corp.	A	Dividend	J	T	exempt				
3 Ontrack Data Int'l, Inc.	A	Dividend	J	T	exempt				
4 Photo Control Corp.	A	Dividend	J	T	exempt				
5 Uroplasty, Inc.	A	Dividend	J	T	exempt				
6 A.C.L.N. Ltd.	A	Dividend	J	T	exempt				
7 Minnesota Deferred Comp. Plan	D	Dividend	L	T	exempt				
8 Oppenheimer Funds	A	Dividend	K	T	exempt				
9 Vanguard Explorer Fund	A	Dividend	J	T	exempt				
10 rental property	D	Rent	M	Q	exempt				
11									
12									
13									
14									
15									
16									
17									

1 Int/Ext Codes: A=\$1,000 or less (Col. B), D4 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more E=\$15,001-\$50,000

2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C), D3 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated

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<b>FINANCIAL DISCLOSURE REPORT</b> Name of Person Reporting Lancaster, Joan E.	P. 5 Date of Report 01/25/2002
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## II. ADDITIONAL INFORMATION OR EXPLANATIONS.

(State part of report.)

Cost of rental property appraisal: March 14, 2001.

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<b>FINANCIAL DISCLOSURE REPORT</b> Name of Person Reporting Lancaster, Joan E.	P. 6 Date of Report 01/25/2002
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Joan E. Lancaster Date July 25, 2002

Notes: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 504).

### FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

Senator KOHL. Thank you, and we welcome your family members.

Judge Rufe?

**STATEMENT OF CYNTHIA M. RUFÉ, NOMINEE TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Judge RUFÉ. Thank you, Mr. Chairman. I am especially honored to be here today.

I would like to also take this opportunity to introduce my family and friends who are with me, and I will start with my husband, the Honorable John J. Rufe. My two daughters are here, Mrs. Tiffany Alexander, who today learned that she passed the Pennsylvania Bar, whom I am very proud of, and my second daughter, Meredith Weaver, who drove in from Pittsburgh, where she is a student at the University of Pittsburgh.

Representing my large family of four girls and a brother is my sister, Christine Favata, who was able to get here from North Carolina. The rest were in Florida, and my mother, Mrs. Antoinette Favata, could not get here. So I did wish to mention that. I also am accompanied by my law clerk, Sam Hijab. I am very happy to have him here. We have a family friend with us, Greg Lydon, who works for the Federal Government.

Thank you.

[The biographical information of Judge Rufe follows:]



QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Cynthia M. Rufe  
Formerly Cynthia Marie (Favata) Weaver
2. **Position:** State the position for which you have been nominated.  
  
Judge, United States District Court, Eastern District of Pennsylvania
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Bucks County Court of Common Pleas  
Judges Chambers  
Courthouse  
Doylestown, PA 18901  
(215) 348-6094
4. **Birthplace:** State date and place of birth.  
  
October 30, 1948                      Philadelphia, Pennsylvania
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
I am married to the Honorable John J. Rufe, Judge of the Court of Common Pleas, Bucks County, Pennsylvania. He is employed, as I am, by the Commonwealth of Pennsylvania, Administrative Office of Pennsylvania Courts, 1515 Market Street, Suite 1414, Philadelphia, PA, 19102. His business address is: Bucks County Court of Common Pleas, Judges Chambers, Courthouse, Doylestown, PA, 18901.  
  
Dependent children - none.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

**State University of New York at Buffalo Law School**, Amherst, New York

Dates of attendance: 1974-1977

Degree awarded: Juris Doctor, May, 1977

**Bloomsburg University**, Bloomsburg, Pennsylvania

Dates of attendance: 1972

Degree awarded: Secondary Education Teaching Certification, 1972

**Adelphi University**, Garden City, New York

Dates of attendance: 1966-1970

Degree awarded: Bachelor of Arts, Political Science and Education, May, 1970

7. **Employment Record**: List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

**Bucks County Court of Common Pleas**, 55 East Court Street, Doylestown, PA 18901  
Judge, 1994-Present

**Ten Centre Associates**, Real Estate Investment Partnership, P.O. Box 529, Newtown, PA 18940  
Limited Partner, 1994-Present

**Law Offices of Cynthia M. Weaver**, 110 South State Street, Newtown, PA 18940; 234  
South State Street, Newtown, PA 18940, 1982-1993

**Bucks County Children & Youth Social Services Agency**, 4259 West Swamp Road,  
Doylestown, PA 18901  
Solicitor, 1984-1988

**Bucks County Public Defender**, 55 East Court Street, Doylestown, PA 18901, 1977-  
1982  
Deputy Public Defender, 1980-1981  
Assistant Public Defender, 1977-1980  
Coordinator, Juvenile Division, 1977-1980

**State University of New York at Buffalo Law School**, Amherst, NY  
Administrative Aide, Placement Office, 1976-1977

**Gimbels Department Store**, Oxford Valley Mall, Middletown, PA  
Seasonal Sales Clerk, October - December, 1973

**Bristol Borough School District**, 420 Buckley Street, Bristol, PA 19007  
Secondary Education Teacher, 1970-1972

**Non-Profit Organizations:**

**Big Brothers Big Sisters of Bucks County**, 2875 Old York Road, Jamison, PA 18929  
Advisory Council, Member, 2000-Present

**Organization to Prevent Teenage Suicide, Inc. (OPTS)**, c/o Felice Massey, Ph.D.,  
President, 422 West Durham Street, Philadelphia, PA 19119  
Founding Member, Board of Directors, 1984-1993

**Prevention and Rehabilitation for Youth and Development, Inc. (PRYD)**, Bristol,  
Pennsylvania  
Member, Board of Directors; President, 1978-1980

**Reaching-at-Problems Group Home**, Box 103-2 Creek Road, New Britain, PA 18914  
Member, Board of Directors, 1981-1984

**Schofield Ford Bridge Reconstruction Committee**, Newtown, Pennsylvania  
Founding Member, Board of Directors, 1990-1993; Director Emeritus, 1994-1997

**Soroptimist International of Indian Rock, Inc.**  
Past President, 1985-1987  
Member, 1983-Present

**Today, Inc.**, 1990 Woodbourne Road, Newtown, PA, 18940  
Member, Board of Directors, 1987-1993  
Honorary Member, Board of Directors, 1993-Present

**Youth Services Agency of Pennsylvania**, P.O. Box 508, Neshaminy Manor Center,  
Doylestown, PA 18901  
Member, Board of Directors, 1984-1993

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

**None.**

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

**Pennsylvania Commission for Social Justice**, Grand Lodge of Pennsylvania,  
 Order Sons of Italy in America, Law and Justice Award, 2000  
**A Woman's Place, M.J. Kirkpatrick Award for Leadership**, 1999  
**Erie County Trial Lawyers Award for Excellence in Trial Advocacy**, State University  
 of New York at Buffalo Law School, 1976  
**Adelphi University, Outstanding Senior Woman**, 1970; **President, Lantern, Senior  
 Women's Honorary**  
**Four Chaplain's Legion of Honor**, 1987  
**National Student Register**, 1970  
**Outstanding Young Women of America**, 1980  
**Woman of Distinction Award**, Soroptimist International of Indian Rock, Inc., 1994  
**Who's Who in America**, 2002 (56<sup>th</sup> Edition)  
**Who's Who in American Law**, 1987-2002 (5<sup>th</sup>-12<sup>th</sup> Editions)  
**Who's Who of American Women**, 1985-1986 (14<sup>th</sup> and 15<sup>th</sup> Editions)  
**World Who's Who of Women**, 1986  
**Who's Who in the East**, 1999 (27<sup>th</sup> Edition)  
**Who's Who in the World**, 2001 (19<sup>th</sup> Edition)  
**Who's Who Among Students in American Universities and Colleges**,  
 1970  
**Who's Who in Greek Fraternities and Sororities**, 1970

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

I am presently a member of the following professional organizations:

**Appellate Court Procedural Rules Committee**, Supreme Court of Pennsylvania,  
 Appointed in 1999 for three-year term  
**Bucks County Bar Association**  
 Member, Board of Directors, 1983-1985  
 Chair, Criminal Law Section, 1987-1988  
 Chair, Bench-Bar Committee, 1988-1989  
 Chair, Membership Committee, 1983-1985  
*Pro Bono* Committee, 1988-Present  
 Lawyers Reaching Lawyers Committee, 1997-Present  
**Bucks County Task Force of the Incarcerated Women and the Mentally Ill**, 2000-  
 2001  
 Appointed by Federal Magistrate Hon. Diane Devlin Welsh pursuant to an agreement  
 between parties in class action lawsuit brought by inmates at the Bucks County  
 Correctional Facility to gather information and make recommendations on the  
 treatment of inmates with emphasis on the treatment on the women and the mentally  
 ill.

**Justinian Society**, Member, 1992-Present  
**National Council of Juvenile & Family Court Judges**, 1999-Present  
**Pennsylvania Conference of State Trial Judges**, 1994-Present. Judicial Education Committee, Juvenile Court Section, and Corrections Committee

I am a former member of the following professional organizations, having resigned in 1993 after my election to the bench:

**American Bar Association**  
**American Trial Lawyers Association**  
**National College Criminal Defense Lawyers**  
**Pennsylvania Bar Association**  
**Pennsylvania College Criminal Defense Lawyers**  
**Pennsylvania Trial Lawyers Association**

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**United States Supreme Court**, May 21, 1984  
**United States Court of Appeals, Third Circuit**, March 9, 1987  
**United States District Court, Eastern District of Pennsylvania**, December 22, 1983  
**Pennsylvania Supreme Court**, October 19, 1977  
**Bucks County Court of Common Pleas**, October 13, 1977

There has been no lapse in membership in any court.

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. **None.** If so, describe any action you have taken to change these policies and practices.

**Big Brothers Big Sisters of Bucks County**, 2875 Old York Road, Jamison, PA 18929  
 Advisory Council, Member, 2000-Present

**Organization to Prevent Teenage Suicide, Inc. (OPTS)**, c/o Felice Massey, Ph.D., President, 422 West Durham Street, Philadelphia, PA 19119  
 Founding Member, Board of Directors, 1984-1993

**Prevention and Rehabilitation for Youth and Development, Inc. (PRYD)**, Bristol, Pennsylvania  
Member, Board of Directors; President, 1978-1980

**Reaching-at-Problems Group Home**, Box 103-2 Creek Road, New Britain, PA 18914  
Member, Board of Directors, 1981-1984

**Schofield Ford Bridge Reconstruction Committee**, Newtown, Pennsylvania  
Founding Member, Board of Directors, 1990-1993; Director Emeritus, 1994-1997

**Soroptimist International of Indian Rock, Inc.**  
Past President, 1985-1987  
Member, 1983-Present

**Today, Inc.**, 1990 Woodbourne Road, Newtown, PA, 18940  
Member, Board of Directors, 1987-1993  
Honorary Member, Board of Directors, 1993-Present

**Youth Services Agency of Pennsylvania**, P.O. Box 508, Neshaminy Manor Center, Doylestown, PA 18901  
Member, Board of Directors, 1984-1993

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

**Publications:**

None.

**Speeches, CLE's and Lectures\*:**

**American Association of University Women**, Doylestown, Pennsylvania: Gender and Justice, Fall 1998

**Bucks County Bar Association Bench Bar Conferences, Practicum: People's Law School**, Criminal Law, Custody, Child Abuse, Civil Litigation, Protection from Abuse, 1983-Present

**Bucks County Community College**, Newtown, Pennsylvania, Guest Speaker: Criminal Justice, Career Day, 1985-1997

**Bucks County Police Training**, Edison, Pennsylvania, Speaker: Criminal Justice 1997-1998  
**PBS Channel 12, Ask WHY**, Panelist: Juvenile Justice in Pennsylvania, 1979  
**Pennsylvania Bar Institute**: Speaker: Current Issues in Child Welfare Law, March 2000  
**Pennsylvania Conference of State Trial Judges**: "Custody, Conciliation and Mediation," Annual Conference, July 1997; "Criminal and Civil Statutory and Procedural Rules Update," Annual Conference, July 2000; "Driving Under the Influence and License Suspensions," Mid-Winter Conference, February, 2001; "Families in Crisis" Seminar for Judges and Court Personnel, May, 2001  
**Pennsylvania State University**, Ambler Campus, Guest Speaker: Criminal Justice, 1980  
**State Victim-Witness Child Advocacy Seminar** - Pittsburgh, Pennsylvania, Course Lecturer and Facilitator, 1987-1988  
**Temple University**, Philadelphia, Pennsylvania, Guest Speaker: Child Abuse, Criminal Justice 1989-1992; LEAP Project, 1987-Present  
**Texas Criminal Defendant Lawyers Annual Conference**: Child Abuse, Criminal Law, 1993-1995  
**Women's Political Network of Pennsylvania**: Gender in the Court System - Annual Meeting, 1999

**\*Texts of speeches have not been retained. Videos of presentations have been requested and will be supplied as available.**

14. **Congressional Testimony**: List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

**None.**

15. **Health**: Describe the present state of your health and provide the date of your last physical examination.

I believe my general health is excellent, having had a recent, routine physical examination in May, 2001.

16. **Citations**: If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or

significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

- (c) short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

(a) **Summary and Citations for Most Significant Opinions**

***Elise Anne Hanlan v. Marc Alan Hanlan*, Unreported Memorandum Opinion, Bucks County No. A06-92-62120-C (March 29, 1995)**

Child custody case where court granted primary legal and physical custody to father. Affirmed by the Superior Court in an unreported Memorandum Opinion, No. 2633 Philadelphia 1995 (August 19, 1997).

***Theresa Favoroso Kelly v. St. Mary Hospital a/k/a St. Mary Medical Center*, reported at 69 Bucks Co. L. Rep. 227 (1997)**

Product liability case where plaintiff sued hospital for failing to preserve allegedly defective hospital bed. The court refused to recognize spoliation of evidence as an independent tort. Affirmed by the Superior Court at 694 A.2d 355 (Pa. Super. 1997).

***Commonwealth v. Mark Kornstedt*, reported at 66 Bucks Co. L. Rep. 231 (1995)**

Criminal case where defendant discharged a firearm into a moving vehicle. The court convicted defendant of aggravated assault and imposed mandatory five-year sentence. Affirmed by the Superior Court in an unreported Memorandum Opinion, No. 263 Philadelphia 1995 (October 24, 1995). Petition for Allowance of Appeal Denied (May 26, 1996).

Post-Conviction Relief Act: Opinion reported at 70 Bucks Co. L. Rep. 62 (1997). Affirmed by the Pennsylvania Superior Court in an unreported Memorandum Opinion, No. 524 Philadelphia 1997 (January 12, 1998).

***Lower Makefield Township v. William S. Ehrlich*, Unreported Memorandum Opinion, Bucks County No. 94-2201 (March 29, 1995)**

Civil case where Township sought injunctive relief to prevent landowner from clearing trees and vegetative undergrowth from wooded area on land. The court denied the Township's petition for preliminary injunctive relief. Affirmed by the Superior Court at 712 A.2d 761 (Pa. Super. 1998).



***Lower Makefield Township v. The Lands of Chester Dalgewicz*, reported at 73 Bucks Co. L. Rep. 143 (2000)**

Eminent domain case where condemnees challenged the taking of property for a municipal golf course. The court held that the taking was for a proper public purpose and that it was permitted under the Second Class County Code. Affirmed by the Commonwealth Court in an unreported Memorandum Opinion, No. 37 C.D. 2000 (December 29, 2000). Petition for Allowance of Appeal Denied (June 14, 2001).

***Metropolitan Property & Casualty v. Royal Group, Inc.*, Unreported Opinion, Bucks County No. 94-4040-22-1 (May 2, 1996)**

Contractual dispute where the court applied conflict of law principles to determine which insurance carrier was responsible for payment of underinsured motorist benefits. Affirmed by the Superior Court in unreported Memorandum Opinion, No. 2319 Philadelphia 1996 (May 1, 1997).

***Commonwealth v. Richard Montini*, reported at 70 Bucks Co. L. Rep. 219 (1997)**

DUI case where defendant moved to suppress blood test results on the ground that the stop of his vehicle was unlawful. The court denied the motion, concluding that defendant's erratic driving served as a basis for the stop. Affirmed by the Superior Court at 712 A.2d 761 (Pa. Super. 1998).

***Commonwealth v. Michael T. Rushing*, Unreported Memorandum Opinion, Bucks County No. 94-4412-16 (March 29, 1995)**

Criminal case where defendant was convicted of aggravated assault as the result of incident where he severely beat his estranged girlfriend. The court denied post-conviction relief. Affirmed by the Superior Court in unreported Memorandum Opinion, No. 1056 Philadelphia 1995 (April 11, 1996).

Post Conviction Relief Act: Opinion reported at 71 Bucks Co. L. Rep. 520 (1998). Affirmed by the Pennsylvania Superior Court in an unreported Memorandum Opinion, No. 1085 Philadelphia 1998 (October 2, 1998).

***Commonwealth v. William Verticelli*, Unreported Opinion, Bucks County No. 94-2201 (March 29, 1995)**

DUI case where the court found that there was sufficient evidence to convict defendant of drinking and driving offense. Affirmed by the Superior Court at 678 A.2d 379 (Pa. Super. 1996). Affirmed by the Pennsylvania Supreme Court at 706 A.2d 720 (Pa. 1998).

***Commonwealth v. William Weldon*, reported at 74 Bucks Co. L. Rep. 277 (2001)**

Criminal case where defendant was convicted of aggravated indecent assault stemming from the molestation of his biological daughter. Numerous

constitutional and evidentiary issues raised. Affirmed by the Pennsylvania Superior Court in unreported Memorandum Opinion, No. 122 EDA 2001 (December 21, 2001).

[Copies of each of the above-referenced trial court opinions are attached hereto.]

(b) Summary and Citations for All Reversals

*Commonwealth v. Michael Barrett*, Bucks CCP, No. 97-3351 - Superior Court reversal of order granting motion to suppress where police officer made extra-territorial arrest. Superior Court concluded that police officer was in "hot or fresh pursuit" of suspect for Motor Vehicle Code violation and that officer had reasonable basis for not activating emergency lights and making traffic stop in primary jurisdiction. Copy of unreported Memorandum Opinion attached, No. 4255 Philadelphia 1997 (June 29, 1998).

*Barbara Ann Becker v. George F. Becker*, Bucks CCP, No. A-06-88-61290-E-03 - Superior Court reversal and remand of order directing the proceeds from the sale of two parcels of marital property to be divided equally between parties. Superior Court concluded that the terms of the property settlement agreement required only net profits to be distributed equally. Copy of the unreported Memorandum Opinion attached, No. 02909 Philadelphia 1995 (June 12, 1996). Dissenting Opinion filed.

*Bensalem Township Water and Sewer Department v. Keystone Turf Club, Inc.*, Bucks CCP, No. 93-3489 - Superior Court reversal of order striking municipal lien. Lien was stricken on the ground that "special circumstances" existed that warranted the overturning of the existing rate structure. The Superior Court ruled that the property owner had not met its burden of proof and, therefore, that there was no basis for an adjustment in the sewer bills. Copy of unreported Memorandum Opinions (two) attached, No. 1786 C.D. 1996 (February 6, 1997, March 27, 1997).

*Anna-Lena Bromberg v. Christopher Bromberg*, Bucks CCP, No. A-06-93-64411-S-20 - Superior Court partial reversal of child support order. The Superior Court held that the trial court erred in including deferred compensation as a separate component of the father's income. Copy of unreported Memorandum Opinion attached, No. 01410 Philadelphia 1995 (February 8, 1996).

*Commonwealth v. Sikeen Burwell*, Bucks CCP, No. 97-1837 - Superior Court vacated judgment of sentence and remanded this court's order denying defendant's request to withdraw his guilty plea. The Superior Court held that, prior to the imposition of sentence, the trial court must consider prejudice to the

Commonwealth in deciding a request to withdraw plea. Copy of unreported Memorandum Opinion attached, No. 3959 Philadelphia 1997 (June 29, 1998).

***Commonwealth v. Cynthia Efaw, Bucks CCP, No. 98-1677*** - Superior Court reversal of a pre-trial order denying Commonwealth's motion *in limine* in case where insurance company gathered information and obtained statements from defendant during fire investigation. Trial court ruling was based upon the Arson Reporting Immunity Act and the restrictive privacy provisions in the Pennsylvania Constitution. The Superior Court concluded that statute did not require waiver and that defendant had no reasonable expectation of privacy since the insurance agents were not acting as agents of the state. The Superior Court's reversal was affirmed by the Pennsylvania Supreme Court. The Superior Court Opinion is reported at 731 A.2d 625 (Pa. Super. 1999). The Pennsylvania Supreme Court Opinion is reported at 744 A.2d 735 (Pa. 2001). Dissenting Opinion filed.

***Elizabeth England v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Licensing, Bucks CCP, No. 95-8357*** - License suspension case where the Commonwealth Court held that the trial court erred in not admitting electronically transmitted information from appellee's insurance company. The Commonwealth Court held that, while the Department of Transportation did not lay the proper foundation for admitting the evidence under the hearsay exception for business records, the Motor Vehicle Code contained a special statutory exception for insurance documents available to the Department in license suspension cases. Copy of unreported Memorandum Opinion attached, No. 2519 C.D. 1995 (January 8, 1997).

***Timothy Hughes v. Fink, Fink and Associates, Bucks CCP, No. 92-9433*** - Superior Court vacated order granting judgment of *non pros* due to failure to prosecute. The dismissal order was based upon presumption of prejudice resulting from no docket activity for two-year period in accordance with the case law that existed when the order was entered. The Pennsylvania Supreme Court subsequently changed law, overturning prior precedent. In light of the intervening change in law, the Superior Court vacated the trial court's dismissal order and remanded for further proceedings. The Superior Court Opinion is reported at 718 A.2d 316 (Pa. Super. 1998).

***Miller and Son Paving v. Plumstead Township, Bucks CCP, No. 94-4040*** - Eminent domain case where trial court overruled preliminary objections and allowed property owner's claim that there was a *de facto* taking to proceed. The property owner's claim was based upon his inability to use the land for quarrying while a zoning ordinance was being challenged as unconstitutional. The Commonwealth Court affirmed and held that an unconstitutional zoning ordinance could constitute a compensable taking. Upon allowance of an appeal, the Pennsylvania Supreme Court reversed the Commonwealth Court and held that there was no *per se* taking of the landowner's property during the period before

the ordinance was declared unconstitutional. The Commonwealth Court Opinion is reported at 680 A.2d 5 (Pa. Commw. 1996). The Supreme Court Opinion is reported at 717 A.2d 483 (Pa. 1998).

***Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing v. Lisa R. Paul, Bucks CCP, No. 95-7155*** - License suspension case where the Commonwealth Court vacated orders in eight consolidated appeals due to intervening change in the law. The ruling provided that the Department of Transportation lacked authority to suspend licenses based upon out-of-state convictions. Copy of unreported Memorandum Opinion attached, No. 468 C.D. 1996 (May 4, 1997).

***Commonwealth v. David Phillips, Bucks CCP, No. 95-3777*** - Superior Court partial reversal of order dismissing criminal complaint and granting of defendant's motion to suppress. The Superior Court held that while the trial court properly ruled that the arrest and search were unlawful, suppression, not dismissal of the criminal complaint, was the appropriate remedy. Copy of unreported Memorandum Opinion attached, No. 3671 Philadelphia 1995 (October 2, 1996).

***Robert L. Rawlings v. Bucks County Water and Sewer Authority, Bucks CCP, No. 96-2740*** - Ejectment action where the trial court sustained preliminary objections based upon *res judicata* in a case where related eminent domain claims had been litigated in prior lawsuit. Commonwealth Court reversed, concluding that the issues raised were not identical and that the Water and Sewer Authority was not entitled to immunity. The Commonwealth Court Opinion is reported at 702 A.2d 583 (Pa. Commw. 1997).

***Richard Restifo v. New Hope Zoning Hearing Board, Bucks CCP, No. 99-7974*** - Zoning case where the trial court affirmed the zoning hearing board's decision to grant a variance by estoppel. The Commonwealth Court held that the property owner had not established that she was entitled to a variance. Copy of unreported Memorandum Opinion attached, No. 1602 C.D. 2000 (June 28, 2001). Dissenting Opinion filed.

***Donald Carson Souder v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, Bucks CCP, No. 94-8608*** - License suspension case where Commonwealth Court reversed and reinstated appellant's license because evidence of a Maryland driver's suspension alone was not grounds for suspending his operating privileges in Pennsylvania under the Motor Vehicle Code. Copy of unreported Memorandum Opinion attached, No. 2951 C.D. 1995 (September 20, 1996).

***Commonwealth v. Keith Walker, Bucks CCP, No. 96-4133*** - Superior Court reversal of order denying motion to suppress in case where defendant refused to

remove his hands from his pockets after he was observed with others loitering in parking lot in a high crime area. The trial court held that the exchange with the police officers was a “mere encounter” not triggering constitutional protections. The Superior Court disagreed, concluding that police officer’s conduct would have led a reasonable person to conclude that he was being detained and that law enforcement lacked reasonable and articulable suspicion to believe that criminal activity was afoot. Copy of unreported Memorandum Opinion attached, No. 03638 Philadelphia 1996.

[Copies of each of the above-referenced unreported appellate court opinions are attached hereto.]

(c) **Summary and Citations for Opinions Addressing Constitutional Issues**

***Commonwealth v. Russell Adams*, reported at 75 Bucks Co. L. Rep. 1 (2002)**

Hit-and-run case where defendant was convicted of leaving the scene of a fatal automobile accident. On appeal, defendant claimed that the prosecutor improperly questioned defendant about his pre-arrest silence. The court ruled that the impeachment technique employed by the prosecutor was permissible since the defendant took the witness stand and suggested that he was cooperative prior to his arrest. Appeal before the Superior Court pending.

***Commonwealth v. Cynthia Efaw*, reported at 71 Bucks Co. L. Rep. 821 (1998)**

Arson case where the Commonwealth filed a pre-trial motion to determine the admissibility of information gathered by an insurance company investigating fire. The court denied the motion based upon the Arson Reporting Immunity Act and Article I, Section 8 of the Pennsylvania Constitution, which affords greater protection than the United States Constitution. The Superior Court reversed at 731 A.2d 625 (Pa. Super. 1999). The Pennsylvania Supreme Court affirmed the decision of the Superior Court. 744 A.2d 735 (Pa. 2001).

***Commonwealth v. Paul Leroy Ervin*, Bucks CCP, Nos. 95-4981-82**

Criminal case where defendant was convicted of rape, involuntary deviate sexual intercourse and other sex offenses. In a collateral attack of his convictions, defendant alleged that counsel was ineffective for not objecting to references to his pre-arrest silence. The court held that counsel was not ineffective. The Superior Court affirmed at 766 A.2d 859 (Pa. Super. 2000).

***Commonwealth v. Bryan Jones*, reported at 73 Bucks Co. L. Rep. 79 (2000)**

Criminal case where defendant was convicted of rape, statutory rape, aggravated indecent assault and other sex offenses. On direct appeal, defendant contended that his attorney refused to allow him to testify in violation of his constitutional rights. The court found that the record did not support defendant’s claim. Affirmed by the Superior Court in unreported Memorandum Opinion, Nos. 5563 and 5413 Philadelphia 1998 (August 27, 2001).

***Commonwealth v. Mark Kornstedt*, reported at 66 Bucks Co. L. Rep. 231 (1995)**

Aggravated assault case where defendant discharged a firearm into a moving vehicle. Defendant challenged the mandatory five-year sentence. The court held that the mandatory sentence did not violate equal protection, nor was it cruel and unusual punishment. Affirmed by the Superior Court in Memorandum Opinion, No. 00263 Philadelphia 1995 (October 24, 1995). Petition for Allowance of Appeal denied (May 26, 1996).

***Commonwealth v. Keith Walker*, reported at 69 Bucks Co. L. Rep. 265 (1997)**

Drug case where defendant moved to suppress drugs seized from his person after encounter with police officer during which defendant refused to remove his hands from his pockets after he was observed with others loitering in parking lot in a high crime area. The court denied suppression, ruling that the exchange with the police officers was a "mere encounter" not triggering constitutional protections. Reversed by the Superior Court in unreported Memorandum Opinion, No. 3638 Philadelphia 1996 (September 16, 1997).

***Commonwealth v. William Weldon*, reported at 74 Bucks Co. L. Rep. 277 (2001)**

Criminal case where defendant was convicted of aggravated indecent assault stemming from the molestation of his biological daughter. Defendant contended that his Fifth and Sixth Amendment rights were violated as the result of a wiretap during which he made incriminating statements. Because defendant had not been formally charged at the time of the wiretap, the Sixth Amendment was not triggered. Since there was no custodial interrogation, the surveillance did not violate defendant's *Miranda* rights. Affirmed by the Pennsylvania Superior Court in unreported Memorandum Opinion, No. 122 EDA 2001 (December 21, 2001).

**[Copies of each of the above-referenced trial court opinions are attached hereto.]**

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

**None.**

- (b) Have you ever held a position or played a role in a political campaign? **Yes.** If so,

please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1991, I chaired a bi-partisan committee to support the election of two judges who had been appointed by the Governor to fill vacancies on the Bucks County Court of Common Pleas. Membership in my committee consisted of women from the legal community as well as women from other segments and professions of the county. Both candidates, R. Barry McAndrews and John J. Rufe won in the primary election.

In 1992, I assumed the role of Bucks County spokesperson for the re-election campaign of United States Senator Arlen Specter. I participated in debates and caucuses and made public appearances on behalf of the Senator when he could not personally attend. I also helped to plan and coordinate Senator Specter's campaign appearances in Bucks County working with his then Chief of Staff, Patrick Meehan, now U.S. Attorney in the Eastern District of Pennsylvania.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk; **None.**
  - (2) whether you practiced alone, and if so, the addresses and dates; **Yes. Please see below.**
  - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

**Bucks County Public Defender**, 55 East Court Street, Doylestown,  
Pennsylvania, 1977-1982  
Deputy Public Defender, 1980-1981  
Coordinator, Juvenile Division, 1977-1980  
Assistant Public Defender, 1977-79

**Law Offices of Cynthia M. Weaver**, 1982-1993  
234 South State Street, Newtown, Pennsylvania, 1988-1993  
110 South State Street, Newtown, Pennsylvania, 1982-1988

After founding the Law Offices of Cynthia M. Weaver, , which I established in 1982 as a sole practitioner, my practice expanded to a three-attorney firm employing

various legal and support staff. I engaged in general practice providing an array of legal services. We appeared in the county, state and federal courts, specializing in civil and criminal litigation.

**Bucks County Children and Youth Social Services Agency**, 4259 West Swamp Road, Doylestown, PA 18901, Solicitor, 1984-1988

My duties were to represent this agency in dependency, child abuse and neglect proceedings in the Court of Common Pleas, Commonwealth Court, and Supreme Court of Pennsylvania as well as in administrative hearings before the Pennsylvania Department of Public Welfare.

**Judge of the Court of Common Pleas**, Bucks County, 55 East Court Street, Doylestown, PA 18901  
January 1, 1994-Present

I was elected to this position in 1993 having won both primaries. I preside over all aspects of criminal, civil, juvenile, and family court litigation. Although it is traditional that newly sworn judges receive an "apprentice" period in family court, I was assigned significant felony cases for trial within my first month on the bench, presiding over jury selection in a criminal trial the very day I was sworn in. I have also presided over complex civil jury trials involving medical malpractice, product liability and wrongful death actions. Sitting on a trial court held in high regard for its efficiency, I have conducted innumerable settlement conferences which have resulted in pre-trial resolution of all claims. I regard my skills as a facilitator for attorneys and parties seeking to compromise claims to be among my strongest assets as a judge.

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As an Assistant Public Defender in Bucks County, my assignments included criminal defense of indigents (misdemeanor, felony, homicide cases), representation of juvenile delinquents and dependents, guardian-ad-litem for abused and neglected children, and representation of mental patients facing involuntary commitments. In addition to these duties, I created and led the Juvenile Division of that office, which included training all assistant public defenders and paralegals and coordinating with other court offices of Juvenile Probation, District Attorney, Bucks County Children and Youth Social Services Agency and service providers.

Upon my appointment as Deputy Public Defender, my duties expanded to management and training of all attorneys and support staff (approximately 40 personnel,



including secretaries, clerks, paralegals and investigators). I also managed the trial caseload, serving as the liaison to the courts, the Bucks County Prison, Adult Probation and other related departments. As trial coordinator, I reviewed and assigned all incoming cases. These responsibilities were performed in addition to personally maintaining a full caseload, including homicides and appeals.

I resigned my position with the Bucks County Public Defender in early 1982 and opened my law office, a general practice firm specializing in civil and criminal litigation. My private practice focused on trials and litigation, continuing my involvement in criminal and juvenile law, but I added to it the experience of civil cases such as personal injury, defamation, contracts and equity actions, adoptions, estates, and family law. My practice expanded to include employment and discrimination cases as well as personal injury and civil rights litigation in the federal courts.

My typical client base was generally individuals, but also included small corporations and business entities. Due to my extensive experience in child-related law (criminal, juvenile, custody, administrative hearings and appeals) I specialized in this area of practice.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

As a public defender in Bucks County from 1977-1982, I appeared in court almost daily, either for trials, hearings or miscellaneous proceedings.

In private practice my court appearances were less frequent but ranged from two or three appearances per week to daily.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;
- (B) state courts of record;
- (C) other courts.

Ninety-five percent of my court appearances from 1982-1993 when in private practice were in the Pennsylvania state trial and appellate courts. At least 5% of all private practice court appearances were in federal district court.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
- (B) criminal proceedings.

As a public defender, 80% of my litigation was in criminal courts with the remainder of 20% of court appearances in dependency and mental health courts. In private practice, approximately 75% of my cases were civil and 25% criminal.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Bucks County Public Defender statistics are unavailable. An estimate of number of cases tried to verdict is approximately 225 for which I was sole counsel. I was chief counsel on two homicide trials and associate counsel on two homicide trials.

In private practice I averaged 30 to 40 trials to verdict or judgment per year, always as sole counsel or chief counsel.

- (5) Indicate the percentage of these trials that were decided by a jury.

From 1977 to 1993, approximately 25% of these trials were jury and 75% were non-jury.

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

**None.**

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Mindful of each attorney's responsibility to "serve the disadvantaged," my efforts to serve my community and individuals in it began early in my legal career. As a Bucks County Public Defender, representing abused and neglected children and troubled teens, I was asked to join the boards of directors of several organizations that provided counseling services and shelter care for such children. As my legal career progressed, I donated my time and my developing expertise to more organizations. I joined the boards of directors of several non-profit agencies that provided intervention and preventive treatment for youth and families. And, with other concerned professionals, I founded an educational, non-profit agency to prevent teenage suicide. None of these positions were financially compensated.

As a judge since 1994, I have resigned from active Board participation in the various non-profit organizations mentioned above. I remain, however, an advisory board member of several organizations, such as Big Brothers Big Sisters, Inc. and Today, Inc.

In 1988, I was privileged to be selected to a Blue Ribbon panel to establish the first *Pro Bono* program in Bucks County. Working with the Court of Common Pleas, Legal Aid Society and the local bar association, we created a program that continues to provide free legal services to the poor in a variety of cases. I continue this work, as a judge on the *Pro Bono* Committee, which also continues to meet monthly.

Another Bar Association sponsored program that I participate in is Lawyers Relating to Lawyers, or LRL. LRL's parent group, Lawyers Concerned for Lawyers (LCL), grew from a need to establish a support network for attorneys and judges impaired by addiction.

For nearly twenty-five years I have participated in civic and community activities as noted herein. Moreover, much of my donated time is devoted to the legal education of attorneys and judges. I am convinced that better education and training of members of the legal community will enhance our profession and its image and will provide advantages to the individual clients accessing the legal system.

To calculate the number of hours I have devoted to *pro bono* representation of individuals while in private practice is a difficult assignment since I regularly represented a minimum of four individuals per day in protection from abuse matters, and did so at least four times a year. In addition, I donated my legal services to AIDS patients in hospice care, providing each client with a Last Will and Testament and a Living Will. Also, one of my regular *pro bono* assignments was to volunteer three to four days per year at the Bucks County Legal Aid office where I conducted intake interviews and consultations with clients, continuing with representation of those clients when necessary.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
  - (a) the citations, if the cases were reported, and the docket number and date if unreported;
  - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
  - (c) the party or parties whom you represented; and
  - (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. **Commonwealth v. Harman**, Spring trial term 1979, Bucks County, Hon. Paul R. Beckert presiding. While this was not my first homicide case, it was the most significant in terms of complexity. The trial lasted four weeks and resulted in acquittal of all charges. I was assistant counsel to John M. McClure, then Chief Public Defender, and I participated in all phases of case preparation and trial, including the direct testimony of 25 of the 40 defense witnesses.

The defendant, a woman, was charged with first degree murder for shooting her Haitian lover three times in the back of the head while he slept. The justification defense was raised in the context of self-defense and the defense of others. The defense presented factual evidence and expert testimony of domestic abuse and continued threats to the safety of the defendant and her children, successfully utilizing the newly recognized "battered woman" defense.

Chief-counsel: John M. McClure, Esquire  
 John M. McClure & Associates  
 100 Mechanic Street, 2<sup>nd</sup> Floor  
 P.O. Box 1011  
 Doylestown, PA 18901  
 215-348-5505

Principal Counsel for the Commonwealth:  
 Honorable Linda Caracappa, Federal Magistrate United States District  
 Court, Eastern District of Pennsylvania  
 U.S. Courthouse  
 601 Market Street  
 Room 3042  
 Philadelphia, PA 19106  
 267-299-7640

2. **In the Interest of Michael White, a minor, Appeal of Michael White, a minor**, 264 Pa. Super. 190, 399 A.2d 731 (1979), Bucks County, Hon. Paul R. Beckert, presiding. My juvenile client was adjudicated delinquent based on a confession obtained during custodial detention when he and his three accomplices were held overnight in a local jail in violation of the provisions for detaining minors under the Juvenile Act of Pennsylvania. Prior to raising this issue before the Court, minors in Bucks County were routinely held under such circumstances instead of being brought directly to a youth detention center or released to their parents. The ruling in this case, that a police station is an inappropriate place for the detention of juveniles, was a clear mandate to bring Bucks County's juvenile delinquency practice and procedure into compliance with existing law.

Co-counsel: None

Principal Counsel for the Commonwealth:

Kenneth G. Biehn, District Attorney, now the Honorable Kenneth G.  
Biehn  
Bucks County Courthouse  
Judges Chambers  
Doylestown, PA 18901  
(215) 348-6066

3. **Commonwealth v. Chusid**, 1980 Fall trial term, Bucks County, Hon. Isaac S. Garb presiding. I represented the defendant in this homicide case with co-counsel. It is noteworthy as an example of my successful use of the insanity defense, a defense which is more narrowly and restrictively applied in Pennsylvania, and because it was the first and I believe the only trial conducted in the Bucks County Prison. The defendant stabbed her father numerous times, causing his death. She had a history of mental health commitments and violent criminal convictions involving both her parents as victims. After competency issues were resolved, the defense established the criteria of M'Naughton insanity defense. Upon her acquittal by reason of insanity, the defendant was committed to a locked forensic mental ward, where she remains upon annual court review.

Co-counsel: Andrew F. Schneider, Esquire

301 South State Street  
Newtown, PA 18940  
(215) 497-0552

Principal Counsel for the Commonwealth:

Dale A. Reichley, Esquire  
Four Timber Brook Drive  
Quakertown, PA 18951  
(251) 536-7823

4. **Commonwealth v. Taylor**, December trial term, 1980, Bucks County, Hon. Kenneth G. Biehn presiding. This was a criminal jury in which the defendant was charged with simple assault, indecent assault and endangering the welfare of children. The jury, during deliberations, told the judge that it did not want to convict my client of endangering the welfare of children based upon the Commonwealth's theory of the case, that the defendant physically and indecently assaulted his teenage daughter and her girlfriend in the course of driving them home. Instead, the jury wished to consider evidence of the defendant's driving under the influence as evidence of endangering the children's welfare, facts made known to the jury only through the defendant's testimony that he stopped at a motel to sleep off his inebriation because he was concerned about driving under the influence with the girls in the car. The trial court allowed the jury to do so, even though this was not a theory presented to the jury by

the Commonwealth. The Superior Court reversed the defendant's conviction ruling that the jury could not convict the defendant upon a theory of the case other than that presented to it by the Commonwealth, as the defendant was on notice only that he would have to defend against charges of physically abusing the children and not having endangered them while driving while inebriated. This case established that a defendant is entitled to notice not only of the charges against him, but of the alleged conduct which underlies the criminal allegations. The remaining charge of endangering the welfare of children was dismissed upon reversal.

Co-counsel: None

Principal Counsel for the Commonwealth:

(trial) Joanne D. Sommer, Esquire  
Eastburn & Gray, P.C.  
60 E. Court Street  
Doylestown, PA 18901  
(215) 345-7000

(appeal) Diane Devlin, Deputy District Attorney, now the Honorable Diane M. Welsh,  
Federal Magistrate United States District Court, Eastern District of  
Pennsylvania  
U.S. Courthouse  
601 Market Street  
Room 3029  
Philadelphia, PA 19106  
(215) 567-1207

5. Commonwealth v. Samuels, 516 Pa. 300, 532 A.2d 404 (1987). In my first court appointment as conflict counsel in Bucks County, I was appointed to file an appeal of defendant's sentence. I did not represent defendant at trial. The defendant had been sentenced pursuant to the then existing, since declared unconstitutional, and now replaced Pennsylvania sentencing guidelines, which took into account a prior misdemeanor conviction involving a crime which was not committed with a weapon. The Pennsylvania Superior Court 354 Pa. Super. 128, 511 A.2d 221 (1986) accepted my argument that this conviction could not be used as a guideline factor as the enabling legislation for the guidelines authorized an increase in severity of sentences only for persons who had convictions for felonies or crimes committed with a weapon, rather than for persons with convictions for any type of misdemeanor. The Pennsylvania Supreme Court, however, reversed the Superior Court, choosing to allow the guidelines to take into consideration factors other than those specifically enumerated in the guidelines' enabling legislation. By then the Pennsylvania legislature had enacted new sentencing guidelines in accordance with its enabling legislation.

Co-counsel: None

Principal Counsel for the Commonwealth:

(appeal) Gail Fairman, Esquire  
1421 Arch Street  
Philadelphia, PA 19102  
(215) 686-8090

(appeal) Colin M. Jenei, Esquire  
Baldi, Cepparulo & Williams  
123 W. Bridge street  
New Hope, PA 18938  
(215) 862-0700

6. **In Re: D.L., Appeal of Bucks County Children and Youth Social Services**

**Agency v. Commonwealth of Pennsylvania, Department of Public Welfare,**

Commonwealth Court, State File #21-86-134. This case was a child-abuse expungement appeal first heard by the Pennsylvania State Hearings and Appeals Court. As solicitor for the Bucks County Children and Youth Social Services Agency, I defended the Agency's position that use of the defense of "accident" did not contravene an indicated finding of child abuse pursuant to the Child Protective Services Law. In this case a father, in an alcoholic rage, smashed a beer bottle against a wall causing the shattered glass to injure his infant son lying nearby. Father appealed the Agency's "indicated" finding based on his lack of intention to harm his child. While the Hearings and Appeals court agreed with father and ordered the finding expunged from the Child Abuse Registry, the Commonwealth Court of Pennsylvania reversed that ruling, accepting the Agency's position that such acts created an imminent risk of serious physical injury to the child. After the appellate court ruling, the policy and practice of conducting child abuse investigations was modified to conform with this interpretation of the statutory definition of child abuse.

Co-counsel: None

Principal Counsel for D.L.: Unknown

- 7-10. **A.B., et al v. J.B., J.B., et al.**, Bucks County No. 89-010631-17-2  
**J.W., et al v. J.B., J.B., et al.**, Bucks County No. 89-010486-17-2  
**Jane Doe, et al v. J.B., J.B., et al.**, Bucks County No. 89-010664-17-2  
**J.B. & J.B. v. John Gentry, Ph.D.**, Bucks County No. 90-011767  
**Aetna Casualty and Surety v. Jane Roe & John Roe, et al.**, Bucks County No. 90-007496-05-1

One of my most significant legal activities involved a unique set of circumstances that brought to bear all of my legal and life's experience--as a former teacher, mother, criminal defense attorney, former solicitor to an agency that serves to protect abused children, and former defender of victims of child sexual abuse. Starting in 1989 and

continuing until the fall of 1993, I represented a pre-school teacher and her husband who, along with teacher aides and various other school staff, were accused of numerous acts of child sexual abuse, including allegations of satanic and demonic activities against three minor females. After nine months of thorough investigation, the Bucks County District Attorney, Alan Rubenstein, (with assistance from the Attorney General's Office and the Federal Bureau of Investigation) completely exonerated my clients. The Bucks County Children and Youth Social Services Agency, which had initially investigated these three cases, plus six more related cases of such allegations, reversed their initial findings of "indicated" abuse and "unfounded" each and every allegation.

In the interim, three sets of parents had filed civil lawsuits against the teacher, her husband, and the nursery school. As counsel for the teacher and her husband, I had been involved in extensive pre-trial litigation, including but not limited to ancillary lawsuits involving my clients' homeowners insurance company (Aetna Casualty and Surety v. Jane Roe and John Roe, et al.), a lawsuit against the children's treating psychologist, (J.B. and J. B. v. John Gentry, Ph.D.) and claims against the Bucks County Children and Youth Social Services Department. I was lead counsel throughout the investigations and the court litigation.

The civil suits filed by three minors and their parents were dismissed by order of the Honorable Ward F. Clark, J. on August 13, 1993. The Superior Court affirmed the dismissals (02931 PHL 93 and 02963 PHL 93). My clients' counterclaim in those lawsuits were resolved by monetary settlement.

While I could personally conclude my clients' representation in the criminal and child abuse investigations, all to their benefit, the civil cases took a slower route, and most were resolved by co-counsel, Stuart Wilder, Esquire after I assumed my position on the bench. I am proudest of the significant legal services that I performed for my clients who were two innocent, unsuspecting citizens caught up in the wave of hysteria surrounding mass child abuse allegations in the 1980s, for which so many other accused were prosecuted, convicted, jailed, but eventually exonerated. My particular skills in handling these complicated matters not only cleared my clients' names, but resulted in financial settlements in their favor.

Co-counsel: Stuart Wilder, Esquire  
Pratt, Brett & Luce, P.C.  
68 E. Court Street  
Doylestown, Pa., 18901  
(215)-345-1600



George A. Reihner, Esquire  
 Elliott, Reihner Siedzikowski & Egan, P.C.  
 Mellon Bank Building, Ste. 300  
 400 Spruce Street  
 Scranton, PA 18503  
 (570) 346-7569

Principal Counsel for A.B., J.W., and Jane Doe, et al. v. J.B. & J.B., et al.:

Keith S. Erbstein, Esquire  
 Beasley, Casey & Erbstein  
 1125 Walnut Street  
 Philadelphia, PA 19107  
 (215) 592-1000

Principal Counsel Aetna Casualty:

Brian P. Sullivan, Esquire  
 Anderson & Sullivan  
 1710 Walton Road, Suite 300  
 Blue Bell, PA 19422  
 (610) 941-9800

Principal Counsel J.B. & J.B. v. Gentry:

Andre C. Washington, Esquire  
 Post & Schell, P.C.  
 1800 John F. Kennedy Boulevard, 19<sup>th</sup> Floor  
 Philadelphia, PA 19103  
 (215) 587-1071

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense. **No.**
21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

**None.**

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

One of the partners in Ten Centre Associates is a practicing attorney, and I will continue my policy of not accepting his cases. I do not perceive of any other potential conflicts-of-interest during my initial service on the federal bench that I have not already resolved in my last eight years as a state trial judge. In all instances, I will continue to follow the Code of Judicial Conduct.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? **None.** If so, explain.
24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

**Please see attached Financial Disclosure Report.**

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

**Please see attached Financial Statement – Net Worth.**

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? **Yes.**
- (a) If so, did it recommend your nomination? **Yes.**
- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

The Federal Judicial Nominating Commission screens qualified applicants for recommendation to the United States Senators. The Commission recommended my nomination for a position on the United States District Court for the Eastern District of Pennsylvania, as it had on previous occasions in 1992 and 1999.

The process began with the filing of a detailed questionnaire, similar to the Senate Judiciary questionnaire. Interviews were thereafter conducted by panels of three persons

and then, if selected, by the full Commission. I have always found these interviews to be courteous, thorough and interesting. The Commission, in my opinion, works very diligently to select qualified applicants, and I believe they have each time been very fair and courteous to me.

After the interview, my name was forwarded with other recommended applicants to the White House, where I was interviewed by White House legal counsel and a representative of the Department of Justice.

In October of 2001, I was contacted by White House counsel and sent various forms and applications to submit for their consideration. I met with a representative of the Federal Bureau of Investigation who coordinated a background check, and I spoke by telephone to the Justice Department counsel from the Office of Legal Policy who conducted a further background and legal investigation. Finally, I was informed of the President's decision to nominate me for a position on the United States District Court for the Eastern District of Pennsylvania on January 23, 2002.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? **No.** If so, please explain fully.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	6 000.00		Notes payable to banks-secured	0	
U.S. Government securities-add schedule	0		Notes payable to banks-unsecured	0	
Listed securities-add schedule	410 777.87		Notes payable to relatives	0	
Unlisted securities-add schedule	0		Notes payable to others	0	
Accounts and notes receivable:	0		Accounts and bills due	0	
Due from relatives and friends	0		Unpaid income tax	0	
Due from others	0		Other unpaid income and interest	0	
Doubtful	0		Real estate mortgages payable-add schedule	380 123.04	
Real estate owned-add schedule	588 125.00		Chattel mortgages and other liens payable	0	
Real estate mortgages receivable	0		Other debts-itemize:		
Autos and other personal property	150 000.00		Credit Cards	20 000.00	
Cash value-life insurance	0		Line of Credit	390.00	
Other assets itemize:			Margin Account Loan	13 500.00	
IRAs - see addendum	32 647.84				
			Total liabilities	444 013.04	
			Net Worth	1 187 550.71	
Total Assets	1 187 550.71		Total liabilities and net worth	773 537.67	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	0		Are any assets pledged? (Add schedule)	No	
On leases or contracts	0		Are you defendant in any suits or legal actions?	No	
Legal Claims	0		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	0				
Other special debt	0				

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

## 25. FINANCIAL STATEMENT

## NET WORTH – ADDENDUM

SecuritiesJoint Ownership (John J. Rufe and Cynthia M. Rufe)

Univest	105 shares @ \$35.35	\$ 3,711.75
P P & L	80 shares @ \$33.33	2,666.40

John J. Rufe

Bell South Corp.	1218 shares @ \$39.00	=	\$ 47,502.00
PNC Bank	451 shares @ \$61.87	=	27,903.37
P P & L Resources	40 shares @ \$33.33	=	1,333.20
Wachovia Corp.	1300 shares @ \$33.72	=	43,836.00
Univest	8029 shares @ \$35.35	=	<u>283,825.15</u>

TOTAL	\$410,777.87
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IRAsCynthia M. Rufe

Fidelity Management Trust Co.	\$ 20,754.85
First National Bank	4,476.51

John J. Rufe

Federated Equity, Inc.	<u>\$ 7,416.48</u>
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TOTAL	\$ 32,647.84
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Real Estate Owned

One Barclay Court, Newtown, Pa., 18940 (CMR)	\$450,000.00
Ten Centre Plaza (CMR owns 12.5%)	
$\$1,105,000.00 \div 8$	<u>138,125.00</u>

TOTAL	\$588,125.00
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Mortgages on Real Estate

Countrywide Home Loan (CMR)	\$289,955.71
Countrywide Home Loan Equity (CMR)	57,762.49

Ten Centre Plaza

First National Bank (CMR – 12.5%)	
$\$259,238.74 \div 8$	<u>\$ 32,404.84</u>

TOTAL	\$380,123.04
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AO-10 (w)  
Rev. 1/2000

# **FINANCIAL DISCLOSURE REPORT** **Nomination Report**

Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<p><b>1. Person Reporting</b> (Last name, first, middle initial) Rufe, Cynthia M.</p> <p><b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee</p> <p><b>7. Chambers or Office Address</b> Bucks County Courthouse 55 E. Court Street Doylestown, PA 18901</p>	<p><b>2. Court or Organization</b> USDC, Eastern District of PA</p> <p><b>5. Report Type (check type)</b> <input checked="" type="checkbox"/> Nomination, Date 01/23/2002 Initial Annual Final</p> <p><b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b></p> <p>Reviewing Officer _____ Date _____</p>	<p><b>3. Date of Report</b> 01/28/2002</p> <p><b>6. Reporting Period</b> 01/01/2001 to 01/01/2002</p>
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*IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.*

## **I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

**POSITION**  
**NONE** (No reportable positions.)

**NAME OF ORGANIZATION / ENTITY**

- |   |   |
|---|---|
| 1 Judge, Court of Common Pleas, Bucks County Commonwealth of Pennsylvania |   |
| 2 Partner (12.5%)   | Ten Centre Associates (commercial real estate investment - please see VIII, attached) |
| 3 Honorary Member, Board of Directors                                     | Today, Inc. (non-profit drug & alcohol treatment facility)                            |

## **II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

**DATE**

**PARTIES AND TERMS**

**NONE** (No reportable agreements.)

- |           |   |
|-----------|---|
| 1 1994-02 | Pa. State Employees Retirement System - pension upon retirement |
| 2         |   |
| 3         |   |

## **III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

**DATE**

**SOURCE AND TYPE**

**GROSS INCOME**  
(yours, not spouse's)

**NONE** (No reportable non-investment income.)

- |        |                                      |            |
|--------|--------------------------------------|------------|
| 1 2000 | Commonwealth of Pennsylvania (Judge) | 113,789.00 |
| 2 2001 | Commonwealth of Pennsylvania (Judge) | 116,117.52 |
| 3 2000 | Commonwealth of Pennsylvania (Judge) |            |
| 4 2001 | Commonwealth of Pennsylvania (Judge) |            |

SOURCE		DESCRIPTION
NONE (No such reportable reimbursements.)		
1		Exempt
2		
3		
4		
5		
6		
7		

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1		Exempt	
2			
3			

CREDITOR		DESCRIPTION	VALUE CODE
NONE (No reportable liabilities.)			
1	First National Bank	mortgage on investment property - commercial real estate (12.5%)	K
2	Optima/American Express	credit card	
3	Chase	credit card	
4	Citicorp	credit card	J
5	Citicorp	credit card	J
6	PNC Bank	line of credit	J
* VAL CODES: J=\$15,000 or less      K=\$15,001-\$50,000      L=\$50,001 to \$100,000      M=\$100,001-\$250,000      N=\$250,001-\$500,000 O=\$500,001-\$1,000,000      P1=\$1,000,001-\$5,000,000      P2=\$5,000,001-\$25,000,000      P3=\$25,000,001-\$50,000,000      P4=\$50,000,001 or more			

**FINANCIAL DISCLOSURE REPORT** Name of Person Reporting: Rufe, Cynthia M. Date of Report: 01/28/2002  
**VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month- Day	(3) Value Gain Code (J-P)	(4) Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Commercial Real Estate, Newtown, PA	D	Rent	M	U	exempt				
2 First National Bank of Newtown (money market savings acct.)	A	Interest	J	T	exempt				
3 First National Bank of Newtown (IRA, CD)	A	Interest	J	T	exempt				
4 Fidelity Independence Fund (Mutual Funds, IRA)	A	Dividend	K	T	exempt				
5 Pa. State Employees Retirement System (pension)	C	Interest	L	T	exempt				
6 Federated Equity, Inc. (mutual funds, IRA)	A	Dividend	J	T	exempt				
7 UVSP	A	Dividend	J	T	exempt				
8 BLS	A	Dividend	K	T	exempt				
9 ICGE	A	Dividend			exempt				
10 PNC	A	Dividend	K	T	exempt				
11 PPL	A	Dividend	J	T	exempt				
12 WB	B	Dividend	K	T	exempt				
13 UVSP	D	Dividend	P4	T	exempt				
14 Pa. State Employees Retirement System (pension)	C	Interest	P4	T	exempt				
15									
16									
17									
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000 K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000 M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market									



FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Rufe, Cynthia M.	Date of Report 01/28/2002
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**  
(Indicate part of report.)

I. Positions (continued from page 1)

2. Ten Centre Associates is a partnership in which I hold a 12.5% ownership of commercial real estate, Ten Centre Plaza. The real estate has a long-term lease with the Pennsylvania Liquor Control Board and another store front which is rented to a separate tenant. I am not involved in the management or the daily operations of the real estate.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Rufe, Cynthia M.	Date of Report 01/28/2002
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**SECTION HEADING.** (Indicate part of report.)  
Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Advisory Council Member	Big Brothers/Big Sisters (non-profit organization Bucks County Chapter)

PART 6. LIABILITIES (cont'd.)

Line	Creditor	Description	Value	Code
7	Janney Montgomery Scott	debit account		J

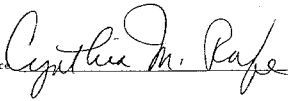
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Rufe, Cynthia M.	01/28/2002

## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1-28-02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator SPECTER. Mr. Chairman, may the record reflect that the Pennsylvania Bar is very tough, perhaps exceeded only by Wisconsin? [Laughter.]

And Senator Hatch, a member of the Pennsylvania Bar, can confirm my representation.

Senator HATCH. I can confirm that.

Senator KOHL. Mr. Walter?

**STATEMENT OF JOHN F. WALTER, NOMINEE TO BE DISTRICT  
JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Mr. WALTER. Good afternoon, Mr. Chairman. Thank you very much for the hearing today.

I would like to introduce first my wife of 35 years, Joyce Walter. I am accompanied also by good friends, Commissioner Robert Bonner, of the United States Customs Service, and his wife, Kimmie, and another good friend, Jan Handzlik, and his daughter, Anna.

Unfortunately, my daughter, Dr. Amy Walter, could not be here today, but I would like to mention her, as well as my son, Jeffrey Walter.

Thank you very much.

[The biographical information of Mr. Walter follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
John (Jack) Frederick Walter
2. **Position:** State the position for which you have been nominated.  
  
U.S. District Court Judge - Central District of California
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Walter, Finestone & Richter  
11601 Wilshire Boulevard, Suite 1900  
Los Angeles, California 90025  
(310) 575-0800
4. **Birthplace:** State date and place of birth.  
  
November 3, 1944; Buffalo, New York
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Married: Joyce A. Langsdorf; not employed outside the home; no dependent children
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
Loyola University of Los Angeles School of Law; 1966-1969  
Date of Degree: June 1969  
Degree: J.D.  
  
Loyola University of Los Angeles; 1962-1966  
Date of Degree: June 1966  
Degree: B.A. Sociology, Minor: Philosophy

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Walter, Finestone & Richter 1976 to present (Partner)  
11601 Wilshire Boulevard  
Suite 1900  
Los Angeles, California 90025

Kindel & Anderson 1969-1970; 1972-1976 (Dissolved) (Associate)  
555 South Flower, 29th Floor  
Los Angeles, California 90071-2498

Department of Justice 1970-1972; (United States Attorney's Office-Central District of California)  
Assistant United States Attorney; Criminal Division; Fraud and Special Prosecutions Unit  
(leave of absence from Kindel & Anderson)

Kindel & Anderson 1966-1969 (Dissolved) (Intern/Clerk)  
555 South Flower, 29th Floor  
Los Angeles, California 90071-2498

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

On March 23, 1992, I received a unanimous "well qualified" opinion from the American Bar Association Standing Committee on Federal Judiciary to serve as a United States District Court Judge for the Central District of California.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Los Angeles County Bar Association  
 American Bar Association, Litigation Section  
 Federal Bar Association  
 Association of Business Trial Lawyers  
 Federal Indigent Defense Panel  
 Hawaii Bar Association

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of California - 1970  
 U.S. Supreme Court - 1974  
 9th Circuit Court of Appeals - 1972  
 U.S. District Court, Central District of California 1970  
 U.S. District Court, Southern District of California -  
 1973  
 U.S. District Court, Northern District of California -  
 1988  
 State of Hawaii - 1989  
 U.S. District Court, Hawaii - 1989  
 U.S. Court of Federal Claims - 1990

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not applicable.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Not applicable.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

On February 29, 1986, I testified before the Committee on Agriculture, Nutrition and Forestry United States Senate, Ninety-Ninth Congress on S.2045 regarding proposal to repeal automatic stay provisions of Section 17(h) and (i) of the Commodity Exchange Act. Copies of my written statement are submitted herewith.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Good; September 2001.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

None.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I have not served as a clerk to a judge.

- (2) whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Kindel & Anderson 1969-1970; 1972-1976 (Dissolved)  
(Associate)  
555 South Flower, 29th Floor  
Los Angeles, California 90071-2498



Department of Justice 1970-1972 (United States Attorney's  
Office-Central District of California)  
Assistant United States Attorney; Criminal Division; Fraud and  
Special Prosecutions Unit  
(leave of absence from Kindel & Anderson)

Walter, Finestone & Richter 1976 to present (Partner)  
11601 Wilshire Boulevard  
Suite 1900  
Los Angeles, California 90025

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

From 1970 to 1972 I was an Assistant United States Attorney in the Criminal Division and the Fraud Special Prosecutions Unit of the United States Attorney's Office in Los Angeles. In that capacity, my practice was exclusively devoted to the prosecution of federal crimes. In private practice, I have enjoyed an extremely active civil litigation practice representing a broad spectrum of clients from individuals and closely held corporations to large institutional corporations whose complex legal requirements span many interrelated areas. I have broad trial and appellate experience in state and federal courts throughout California as well as local and national administrative agencies.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Represented Northrop Corporation in the Shareholders derivative action; Co-counsel with former partner in complex commodities action filed by the Commodity Futures Trading Commission; Counsel to former President of Pea Soup Anderson's ("PSA") in complex action brought by heirs of the former owner of PSA; Counsel to client in a complex mail fraud prosecution involving the sale of U.S. land in the Netherlands and other European countries; Represented client in complex disputes among relators arising out of False Claims Act cases; Represented former President of PacTel Cellular in connection with alleged claims of price fixing between PacTel Cellular and L.A. Cellular; Counsel to automobile dealerships in a Cartwright Act action brought by two after-market conversion companies against automobile manufacturer and dealerships; Counsel to a national law firm in connection with claims arising out of a wrongful termination action; Counsel to a Big Six accounting firm in a grand jury investigation

involving potential violations of federal law; Counsel for The UCLA Foundation, which is a charitable foundation affiliated with UCLA, in various probate litigation matters.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

Occasionally to frequently. Since 1990, I have appeared in court occasionally and have tried fewer cases. Prior to 1990, I appeared in court frequently in motion practice and in trying cases to verdict or judgment. From 1970 to 1972, I tried more jury trials as an Assistant United States Attorney.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;  
(B) state courts of record;  
(C) other courts.

25% Federal Court  
70% State Courts of Record  
5% other courts

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings;  
(B) criminal proceedings.

70% Civil  
30% Criminal

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict or judgment approximately 45 to 50 cases. In all of these cases, I was sole counsel.

- (5) Indicate the percentage of these trials that were decided by a jury.

I estimate that approximately one-half of such trials were jury trials.

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

As a member of the Federal Indigent Defense Panel, I successfully briefed and argued the case of U.S. v. Johnson, 457 U.S. 537 (1982). In addition, I prepared and filed a Writ of Certiorari in Portley v. Grossman, 450 U.S. 962 (1981). The Supreme Court granted the Writ of Certiorari, vacated the judgment, and remanded the case for further consideration. Copies of Petition for Writ of Certiorari in Portley v. Grossman, Brief of Respondent in U.S. v. Johnson, and Brief in Opposition to Petition for Writ of Certiorari in U.S. v. Johnson, are submitted herewith.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

I have been a member of the Federal Indigent Defense Panel in the Central District of California for approximately twenty years. In that capacity, I have represented in excess of seventy-five indigent defendants who were charged with federal crimes in federal court. I have spent several thousand hours in the representation of these clients. I have also served as a judge pro tempore in the Santa Monica Municipal Court for approximately five years. In that capacity, I served as a small claims judge hearing civil cases. I estimate that I averaged in excess of fifty hours per year as a Small Claims Judge. Since 1994, I have served as an Arbitrator/Mediator for the Los Angeles Superior Court Judicial Arbitration Program. I average approximately seventy-five to one hundred hours per year as an Arbitrator/Mediator.

In addition, my law firm was counsel to Anne Hall in an action entitled Anne Hall v. Los Angeles Homeowners Aid, Inc.; All Counties Mortgage Service, et al. L.A. Super. Ct. No. 545490. This action involved claims of fraudulent, unlawful, and unfair business practices by Defendants arising from the sale of residential property to Plaintiff and other low income individuals in Los Angeles. We invested in excess of 1,000 hours of attorneys' time in our representation of Mrs. Hall. Finally, my firm serves as counsel to several charitable foundations without compensation. These foundations have included the UCLA Foundation, Hugh O'Brien Youth Foundation, and University of La Verne.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

- (1) United States v. Johnson, 626 F.2d 753 (9th Cir. 1980); 457 U.S. 537, 73 L.Ed.2d 202, 102 S.Ct. 2579 (1982)

- Honorable Francis C. Whelan, 312 No. Spring Street, Los Angeles, California 90012 (213) 894-3632

- Prosecutor: Honorable Lourdes G. Baird, U.S. District Judge, Central District, 312 No. Spring Street, Los Angeles, California 90012 (213) 894-2434

- Defense Counsel: John F. Walter

- Government Appellate Counsel (U.S. Supreme Court): Elliott Schulder, Office of the Solicitor General

This action was a two week jury trial that was tried in approximately 1978. I represented Mr. Johnson in the trial court, the Ninth Circuit Court of Appeals, and the United States Supreme Court. This case involved significant constitutional issues regarding the retroactivity of Fourth Amendment issues and Mr. Johnson prevailed in a five to four decision in the Supreme Court.

- (2) United States v. Mulligan, 488 F.2d. 732 (9th Cir. 1973)

- Honorable William M. Bryne, Jr., 312 No. Spring Street, Los Angeles, California 90012 (213) 894-3280

- Prosecutor: John F. Walter

- Defense Counsel:

Anthony M. Glassman, Glassman, Browning & Saltsman, 360 N. Bedford Drive, Suite 204, Beverly Hills, California 90210 (310) 278-5100;

Victor Sherman, 2115 Main Street, Santa Monica, California 90405 (213) 399-3259

I prosecuted this action in approximately 1971 and at that time it represented the largest bank burglary ever committed in the United States. The hearing on various search and seizure motions lasted for approximately two weeks and the jury trial, which lasted for approximately eight weeks, resulted in the conviction of all defendants.

(3) Capital Investments v. Weinberg, et al., Orange County Super. Ct. No. 44-21-45

- Honorable James P. Gray, 700 Civic Center Drive West, Santa Ana, California 92701 (714) 834-4680; (714) 834-3734

- Plaintiff's Attorney: Robert C. Braun, Rutan & Tucker, 611 Anton Boulevard, Suite 1400, Costa Mesa, California 92626 (714) 641-5100

- Co-Defendant Stout's Attorney: Alan I. White, Drummy, King, White, Parret & Joerger, 3200 Park Center Drive, Suite 1000, Costa Mesa, California 92628 (714) 850-1800

- Co-Defendant Wilson's Attorney: Lawrence Bujold, 5000 Birch Street, Suite 2900, Newport Beach CA 92660 (714) 476-2672

- Defendant Metcalf's Attorney: John F. Walter

The non-jury trial of this action commenced in June of 1991 and lasted for approximately one week. As a result of a Motion for Summary Adjudication of Issues, the defendants obtained a ruling that the loan at issue in this case, which was in excess of \$1,000,000.00, was usurious. The primary issue at the trial involved whether the defendants were entitled to treble the usurious interest pursuant to California Civil Code Section 1916-3(a). After a court trial, Judge Gray entered judgment against our client. The Court of Appeal, Fourth Appellate District, Division Three, affirmed the judgment in an unpublished opinion.

- (4) Mark R. Weinberg v. Commodity Futures Trading Association; National Futures Association, U.S. Dist. Ct. No. 86-7603 (R), 699 F. Supp. 808 (C.D. Cal. 1988)

- Honorable Manuel L. Real, 312 No. Spring Street, Los Angeles, California 90012 (213) 894-5267

- Opposing Counsel:

- CFTC Attorney: Ellen J. Abraham, Commodity Futures Trading Commission, 10850 Wilshire Boulevard, Suite 370, Los Angeles, California 90024 (213) 209-6783

- Counsel to NFA: James E. Green, Zap Futures, 233 South Wacker Drive, Suite 2400, Chicago, Illinois 60606 (312) 441-6029

In this action I was co-counsel with my former partner. This action was tried to the court pursuant to cross motions for summary judgment. As set forth in Judge Real's opinion, this action was a case of first impression because it involved the first appeal of Member Responsibility Action (MRA) to the Commodity Futures Trading Commission (CFTC) and the first such action to be filed for review in the federal court. This action involved the following issues: (1) the procedure used by the National Futures Association (NFA) to discipline members was not authorized by the Commodity Exchange Act, 7 USC §1-24; (2) the MRA employed by the NFA to discipline Mr. Weinberg denied him due process; and (3) the CFTC's order affirming the action of the NFA was in violation of the Administrative Procedure Act, 5 USC §702-706. The district court's decision granting NFA and CFTC's motions for summary judgment were affirmed by the Ninth Circuit Court of Appeals in an unpublished opinion dated September 6, 1989.

The issues in this action resulted in my testimony on February 20, 1986 before the Senate Committee on Agriculture, Nutrition, and Forestry Regarding the Proposal to Repeal the Automatic Stay Provisions and the Mandatory Oral Argument Requirements of §17(h) and (i) of the Commodity Exchange Act, 7 USC §21(h) and (i).

- (5) Evans v. Bank of America, U.S. Dist. Ct. No. 84-4842, 829 F.2d 1128 (9th Cir. 1987) and 904 F.2d 40 (9th Cir. 1990) (Unpublished opinions)

- Honorable Alicemarie H. Stotler, 751 W. Santa Ana Boulevard, Santa Ana, California 92701 (714) 836-2204; (714) 338-4758

- Plaintiff's Attorney: Oakley C. Frost, Menke, Fahrney & Carroll, 650 Town Center Drive, Suite 1850, Costa Mesa, California 92626 (714) 556-7111

- Attorneys for Co-Defendants Bank of America, NT&SA, Frank B. Todd, Timothy Gamble, and William O. Gamble: William K. Swank, Brobeck, Phleger & Harrison, 550 South Hope Street, Los Angeles, California 90017 (213) 489-4060

- Attorneys for Co-Defendant First Valley Bank: H.O. Van Petten, Van Petten & Holen, 900 Wilshire Boulevard, Suite 1100, Los Angeles, California 90017 (213) 627-7971

- Attorneys for Co-Defendant Richard Quigley: J. Anthony Vittal, Vittal and Sternberg, 1900 Avenue of the Stars, 25th Floor, Los Angeles, California 90067-4506 (213) 551-0900

- Attorneys for Co-Defendant Lucien Escallier: Mark P. Robinson, Robinson, Robinson & Phillips, 1000 Wilshire Boulevard, Suite 1950, Los Angeles, California 90017 (213) 485-1798

- Attorneys for Co-Defendants Griffith & Thornburgh and Brian Rapp: Bruce A. Armstrong, Haight, Brown & Bonesteel, LLP, 6080 Center Drive, Suite 800, Los Angeles, California 90045-1574 (310) 215-7100

- Attorneys for Co-Defendant Arthur Anderson & Company: Cheryl Mason, O'Melveny & Myers, 400 South Hope Street 15th Floor, Los Angeles, California 90017 (213) 430-6000

- Attorneys for Co-Defendants Eldon Haskell and Jo Winkler: Charles W. Willey, 806 Parkview Way, Missoula, Montana 59803-2322 (406) 549-3852

I represented Mr. O'Healy in this action which was tried to Judge Stotler by virtue of a Motion for Summary Judgment. This was a complex action involving RICO claims, securities fraud claims, accounting and legal malpractice claims brought by the heirs of the owners of Pea Soup Anderson against numerous defendants. Mr. O'Healy was the former President of Pea Soup Anderson. We prevailed in the district court and Judge Stotler's decision was affirmed by the 9th Circuit Court of Appeals in an unpublished opinion.

(6) United States v. Boyd Berlind, et al., U.S. Dist. Ct. No. 79-004663

- Honorable Howard F. Corcoran, District of Columbia

- Government Attorney: Peter H. Goldberg, Special Assistant U.S. Attorney, Department of Justice, Washington, D.C.

- Defendant, R. Christian Wtaker's Attorney: Robert M. Ornstein, Ornstein & Harris, 109 E. De La Guerra Street, Santa Barbara, California 93101-2228 (805) 963-1993

- Defendant, Boyd Berlind's Attorney: John F. Walter

This was a complex mail fraud prosecution that I tried before Judge Corcoran in the District of Columbia in April of 1980. The two week trial resulted in a hung jury and the case was ultimately transferred to the Central District where it was resolved by a favorable plea agreement.

(7) Walsh v. Taxpayers Against Fraud, et al., L.A. Super. Ct. No. BC198462, District Court of Appeal No. B138033 (Unpublished Opinion)

- Honorable Judith M. Ashmann, California Court of Appeal, Second Appellate District, 300 South Spring Street, Los Angeles, California 90013-1213 (213) 830-7000

- Plaintiff's Attorneys: Lindsay R. Brack, Brack & Mason, 12396 World Trade Drive, Suite 217, San Diego, California 92128 (619) 674-7414; Michael J. Piuze, 11755 Wilshire Boulevard, Suite 1170, Los Angeles, California 90025 (310) 312-1102

- Co-Defendants' Attorneys: Marc Marmaro, Jeffer, Mangels, Butler & Marmaro, 2121 Avenue of the Stars, Tenth Floor, Los Angeles, California 90067 (310) 203-8080

This was a complex action brought in 1998 by a former *qui tam* plaintiff who had received an unprecedented *qui tam* award of more than \$5.7 million in a false claims act case entitled U.S. v. General Electric Company, Ohio U.S. Dist. Ct. No. C-1-90-792 (Judge Graham). Mr. Walsh's complaint alleged claims for breach of fiduciary duty, fraud, and professional negligence. I was sole trial and appellate counsel to Taxpayers Against Fraud and the case was tried to Judge Ashmann by virtue of a Motion for Summary Judgment. Judge Ashmann's decision granting judgment in favor of the defendants was affirmed by the District Court of Appeal in an unpublished opinion.

(8) Goldenwest Cellular Corp. v. Los Angeles Cellular Telephone Company, PacTel Cellular, et al., Orange County Super. Ct. No. 715472

- Honorable Ronald L. Bauer, Orange County Superior Court, 700 Civic Center Drive West, Santa Ana, California 92701 (714) 568-4817; (714) 834-3734

- Plaintiff's Counsel: Joel Wohlfeil, Boudreau, Albert & Wohlfeil, 185 West F Street, Suite 400, San Diego, California 92101 (619) 687-2555



- L.A. Cellular's Counsel: Gibson, Dunn & Crutcher, Robert C. Bonner, James R. Martin, Mark E. Weber, 333 South Grand Avenue, Los Angeles, California (213) 229-7000  
Robert C. Bonner's current address: Commissioner Robert C. Bonner, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229 (202) 927-1000

- PacTel Cellular's Counsel: Dale C. Lysak, The Dzivi Law Firm, 244 California Street, No. 200, San Francisco, California 94111 (415) 616-2193

This was one of several actions filed in 1993 alleging that Los Angeles Cellular, PacTel Cellular, and others engaged in a scheme to fix prices for the provision of cellular telephone service in violation of California law. The California Attorney General's office conducted a parallel investigation of many of the allegations made by plaintiffs in this action. I represented the former President of PacTel Cellular in connection with these claims.

(9) Northrop Corporation by Gary Goldberg, a Shareholder v. Thomas V. Jones, et al. And Northrop Corporation, U.S. Dist. Ct. No. 88-7332 DVK (Kx)

- Honorable David K. Kenyon (Retired), 312 N. Spring Street, Los Angeles, California 90012

- Attorneys for Plaintiff: William S. Lerach, Milberg, Weiss, Bershad, Hynes & Lerach, LLP, 600 West Broadway, 1800 One America Plaza, San Diego, California 92101 (619) 231-1058

- Attorneys for Outside Directors: Elwood G. Lui (213) 489-3939, Stephen J. Brogan (202) 879-3926, Jones, Day, Reavis & Pogue, 555 West Fifth Street, Suite 4600, Los Angeles, California 90013-1025

I was counsel for Northrop Corporation in the shareholder derivative action before Judge Kenyon, entitled Northrop Corporation by Gary Goldberg, Rodney Shields and Gabrielle Mayran, shareholders suing derivatively, Plaintiffs v. Thomas V. Jones, et al., Defendants, U.S. District Court No. CV 88-7332 KN (Kx). The Plaintiffs commenced this derivative action in United States District Court for the Central District of California on December 12, 1988 after Plaintiffs dismissed three prior derivative actions initiated in the California state court. As a result of Judge Kenyon's dismissal of Plaintiffs' First Amended Complaint, Plaintiffs filed a Second Amended Complaint on January 22, 1990 alleging inter alia that the Defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) and Section 14a of the Securities Exchange Act of 1934, breached their fiduciary duties to Northrop and committed unfair and unlawful business practices under California law in connection with (a) the design, production, testing and certification of components for the Air

Launch Cruise Missile and the submission of claims to the United States government for payment for the components, (b) the design, production, testing and certification of components for the Harrier Jet and the submission of claims to the United States government for payment for the components, (c) the design, production, testing and certification of components and test equipment for the MX Missile and the submission of claims to the United States government for the payment for the components and test equipment, (d) the design, production, testing and certification of the B-2 Stealth Bomber and the submission of claims to the United States government for payment for the B-2, (e) the design and production of the F-20 Tigershark Fighter, the marketing (including conduct relating to offset and countertrade activities) of the F-20 to foreign governments, including the government of South Korea, the payment of \$6.25 million of Northrop's funds to Asia Culture Travel Development Company, the retention of Dong Yang Express as a commission sales representative, and the payment of \$1.5 million to Dong Yang Express in 1986, (f) the performance of the Tacit Rainbow Missile and All-Service Target and Reconnaissance Aircraft projects and the use of Consultant Defendants Galvin and Parkin with respect to, *inter alia*, such projects, (g) the sale of Northrop common stock during the period 1984 through 1988, and (h) the alleged failure to adequately oversee the affairs of Northrop and to maintain an adequate system of internal financial, accounting and other controls.

The Director and Officer Defendants and Northrop moved to dismiss the Second Amended Complaint ("Motion to Dismiss") for failure to state a claim, for failure to plead fraud with the particularity required by Federal Rule of Civil Procedure 9(b), and for failure to make a demand on the Northrop Board of Directors (the "Board") as required by Federal Rule of Civil Procedure 23.1. Prior to the hearing on the Motion to Dismiss, the parties participated in extensive settlement negotiations. As a result of the settlement negotiations conducted by Magistrate Judge McCue, the action was settled for the sum of \$18 million. After giving appropriate notice to the shareholders, Judge Kenyon approved the settlement as a fair, reasonable, and adequate compromise of Plaintiffs' claim at a hearing held on June 26, 1991.

- (10) United States of America, ex. rel. Taxpayers Against Fraud, Klaus Kirchhoff and Max Killingsworth v. Teledyne Systems Company, Inc., U.S. Dist. Ct. No. 89-2765-WJR (Ex)

- Honorable William Rea, 312 N. Spring Street, Los Angeles, California 90012  
(213) 894-3656

- Attorneys for the United States: Jennifer Bremer, Leon Wideman, David Ringwell,  
Assistant United States Attorneys' Office, 300 N. Los Angeles, Los Angeles,  
California 90012 (213) 894-2875

- Attorney for Max Killingsworth: Phillip E. Benson, Esq., 333 City Boulevard West, Suite 1410, Orange, California 92868 (714) 634-4534; 8141 Kaiser Boulevard, Suite 203, Anaheim Hills, California 92808 (714) 637-5537

- Attorneys for Teledyne Systems Company, Inc.: Gregory N. Primstone, Latham & Watkins, 633 West Fifth Street, Suite 4000, Los Angeles, California (213) 485-1234

- Attorneys for Taxpayers Against Fraud: John R. Phillips, Phillips & Cohen LLP, 2000 Massachusetts Avenue, N.W., 1st Floor, Washington, D.C. 20036 (202) 833-4567; Terence F. Young, 18 Lansing Street, No. 309, San Francisco, California 94105-2646 (415) 979-9252

This was a False Claims Act Case brought against defendant, Teledyne Systems Company, Inc. ("Teledyne"). Immediately prior to Teledyne's settlement for \$27.5 million, Max Killingsworth, one of the *qui tam* plaintiffs, filed a motion to dismiss his co-defendant Klaus Kirchhoff. In 1992, I successfully represented Klaus Kirchhoff in opposing Mr. Killingsworth's efforts to deprive Mr. Kirchhoff of his share of the relators' award, which was approximately \$6,462,500. Although Mr. Killingsworth appealed Judge Rea's decision denying his motion to dismiss, the case was settled and Mr. Kirchhoff received 100% of his share of the relators' award.

Mr. Killingsworth also filed a state court action entitled Killingsworth v. Taxpayers Against Fraud, et. al., L.A. Super. Ct. No. BC084771, Dist. Court. of Appeal No. B086587 (Unpublished Opinion).

- Honorable Paul Boland, California Court of Appeal, Second Appellate District, Division Eight, 300 South Spring Street, Los Angeles, California 90013-1213 (213) 830-7373

- Plaintiff's Attorney: Phillip E. Benson, Esq., 333 City Boulevard West, Suite 1410, Orange, California 92868 (714) 634-4534; 8141 Kaiser Boulevard, Suite 203, Anaheim Hills, California 92808 (714) 637-5537

- Co-Defendants' Attorney: Marc Marmaro, Esq., Jeffer, Mangels, Butler & Marmaro, 2121 Avenue of the Stars Tenth Floor, Los Angeles, California 90067 (310) 203-8080

I was the sole trial and appellate counsel to Taxpayers Against Fraud ("TAF"), a non-profit public interest organization dedicated to combating fraud against the federal government through the promotion and use of the *qui tam* provisions of the False Claims Act. This was a complex action involving claims of fraud, professional negligence, and breach of fiduciary duty and it was tried to Judge Boland by virtue of

a Motion for Summary Judgment. Judge Boland granted summary judgment and entered judgment in favor of all defendants. Judge Boland's decision was affirmed on appeal as to my client, TAF.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

None.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I intend to resolve any potential conflicts of interest in accordance with the appropriate canons of judicial ethics. I do not anticipate any conflicts of interest as a result of any categories of litigation or financial arrangements.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

Please refer to Financial Disclosure Report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (a) If so, did it recommend your nomination?

Yes.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

After submitting an Application for United States District Court to the Selection Committee for the Central District of California, I was interviewed by the Committee. Thereafter, I was interviewed by the Office of Counsel to the President.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	925,864	Notes payable to banks-secured	
U.S. Government securities-add schedule	150,000	Notes payable to banks-unsecured	
Listed securities-add schedule	649,031	Notes payable to relatives	
Unlisted securities-add schedule	150,000	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned-add schedule	850,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	75,000		
Cash value-life insurance			
Other assets itemize: See Schedule	1,433,000		
		Total liabilities	None
		Net Worth	4,232,895
Total Assets	4,232,895	Total liabilities and net worth	4,232,895
CONTINGENT LIABILITIES	None	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

Schedule to Financial Statement of John and Joyce WalterU.S. Government Securities:

Treasury Bills	\$ 150,000
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(a) Listed Securities:

<u>No. of Shares</u>	<u>Stock Name</u>	<u>Value</u>
170	AT&T	\$ 2,793
7	Avaya	75
170	Bell South	6,457
93	Lucent	1,733
70	Quest Communications Int.	893
318	SBC	13,841
70	Vodafone/Airtouch	1,885
127	Verizon	6,542
54	AT&T Wireless	812
		<u>\$ 34,031</u>

(b) Mutual Funds:

Vanguard GMNA Fund	\$ 174,000
Vanguard Cal Insured Tax Exempt	305,000
Vanguard 500 Index Fund	4,000
Vanguard International Growth Fund	8,500
Vanguard Total Stock Market Index Fund	9,500
T. Rowe Price European Stock Fund	13,000
Janus Olympus Fund	12,000
Schwab 1000 FD Select Index Fund	20,000
Baron Growth Fund	16,000
Gabelli Asset Fund	8,500
Thornberg Value Fund	9,000
Wilshire Target 5000 Index	6,500

Rydex Technology Fund	19,000
Artisan International Fund	5,000
Scudder Greater Europe Growth	5,000
	<hr/>
	\$ 615,000
	34,031
	<hr/>
	\$ 649,031

Unlisted Securities:

8500 Shares of Walter, Finestone & Richter	\$ 150,000
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Real Estate:

Residence: 16611 Merivale Lane	\$ 850,000
Pacific Palisades, California 90272	

Other Assets:

(a) Fredricks Funds I, II, III, and IV	\$ 114,000
(b) IRA – John F. Walter	\$ 37,000
IRA – Joyce A. Walter	9,000
(c) Walter, Finestone & Richter	
Profit Sharing Plan	\$1,273,000
	<hr/>
	\$1,433,000



AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Walter, John F.		2. Court or Organization U.S. Dist. Ct. Judge (C.D. CA)	3. Date of Report 01/28/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Dist. Ct. Judge - Nominee		5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 01/01/2002
7. Chambers or Office Address 11601 Wilshire Boulevard Suite 1900 Los Angeles, CA 90025		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.			

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Officer and shareholder	Walter, Finestone & Richter, a Professional Corporation
2	
3	

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1	John F. Walter and Walter, Finestone & Richter Employment Agreement dated June 1, 1995
2	John F. Walter and Walter, Finestone & Richter Profit Sharing Plan
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1	John F. Walter Salary and Bonus from Walter, Finestone & Richter - 2000	397,500
2	John F. Walter Salary from Walter, Finestone & Richter - 01/01/01 to 01/01/02	228,000
3		
4		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Walter, John F.	01/28/2002

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1			
2			
3			
4			
5			
6			

\* VAL CODES: 0=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Walter, John P.		Date of Report 01/28/2002	
VII. Page 1 INVESTMENTS and TRUSTS — income, value, transactions					
A. Description of Assets (including trust assets)		B. Income during reporting period		C. Gross value at end of reporting period	D. Transactions during reporting period
Place "X" after each asset exempt from prior disclosure.		(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Method Code (Q-W)
		(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure		
(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)		
<input type="checkbox"/>	NONE (No reportable income, assets, or transactions.)				
1	Fredricks Fund I	A	Distribut ion	J	U Exempt
2	Fredricks Fund II	D	Distribut ion	K	U Exempt
3	Fredricks Fund III	C	Distribut ion	K	U Exempt
4	Fredricks Fund IV	C	Distribut ion	K	U Exempt
5	170 shares of AT&T	A	Dividend	J	T Exempt
6	7 shares of Avaya	A	Dividend	J	T Exempt
7	170 shares of Bell South	A	Dividend	J	T Exempt
8	93 shares of Lucent	A	Dividend	J	T Exempt
9	70 shares of Qwest Intl.	A	Dividend	J	T Exempt
10	318 shares of SBC	A	Dividend	J	T Exempt
11	70 shares of Vodafone	A	Dividend	J	T Exempt
12	127 shares of Verizon	A	Dividend	J	T Exempt
13	54 shares of AT&T Wireless	A	Dividend	J	T Exempt
14	Charles Schwab Money Market	E	Interest	N	T Exempt
15	Vanguard Money Market	E	Interest	N	T Exempt
16	Centurion Money Market	D	Interest	L	T Exempt
17	T. Rowe Price Money Market	A	Interest	J	T Exempt
1 Inc./Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000		B=\$1,001-\$2,500 O=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more	
		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		E=\$15,001-\$50,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated	
				T=Cash/Market	

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Walter, John P.	Date of Report 01/28/2002
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VII. Page 2 INVESTMENTS and TRUSTS — income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 Vanguard GNRA Fund	D	Interest	M	T	Exempt				
19 Vanguard Cal. Insured Fund	D	Interest	N	T	Exempt				
20 Vanguard 500 Index Fund	A	Dividend	J	T	Exempt				
21 Vanguard Int'l Growth Fund	A	Dividend	J	T	Exempt				
22 Vanguard Total Stock Market Fund	A	Dividend	J	T	Exempt				
23 T. Rowe Price European Stock	A	Dividend	J	T	Exempt				
24 Janus Olympus Fund	A	Dividend	J	T	Exempt				
25 Schwab 1000 Fund	A	Dividend	K	T	Exempt				
26 Strong Growth Fund	A	Dividend	K	T	Exempt				
27 Gabelli Asset Fund	A	Dividend	J	T	Exempt				
28 Thornberg Value Fund	A	Dividend	J	T	Exempt				
29 Wilshire 5000 Index	A	Dividend	J	T	Exempt				
30 Rydex Technology Fund	A	Dividend	K	T	Exempt				
31 Artisan Int'l Fund	A	Dividend	J	T	Exempt				
32 Scudder European	A	Dividend	J	T	Exempt				
33 IRA - Charles Schwab	A	Dividend	K	T	Exempt				
34 IRA - Charles Schwab	A	Dividend	J	T	Exempt				

1 Net/Gain Codes: A=\$1,000 or less (Col. B1, D4)		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C1, D3)		K=\$15,001-\$50,000 O=\$50,001-\$1,000,000		L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000		M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000		N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000	
3 Val Mth Codes: Q=Appraisal (Col. C2)		R=Cost (real estate only) U=Book Value		S=Assessment V=Other		T=Cash/Market W=Estimated			

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Walter, John F.				Date of Report 01/26/2002			
VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>									
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 Walter, Finestone & Richter Profit Sharing Plan	E	Interest	P1	T	Exempt				
36 8500 shares of Walter, Finestone & Richter			M	U	Exempt				
37 Northern Trust Bank	A	Interest	K	T	Exempt				
38 California National Bank	B	Interest	L	T	Exempt				
39 Wells Fargo Bank	A	Interest	J	T	Exempt				
40									
41									
42									
43									
44									
45									
46									
47									
48									
49									
50									
51									
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Walter, John F.	Date of Report 01/28/2002
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Not applicable

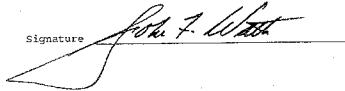
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Walter, John F.	Date of Report 01/28/2002
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## IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/28/02

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

## FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator KOHL. Thank you, Mr. Walter.

Just before we begin the questioning, I would like to advise all the nominees that in addition to today's questions, they may receive written follow-up questions from any member of the committee. The record will be open for a week and we urge the nominees to get their answers in as quickly as possible.

Mr. Howard, let's start with you. You have been a politician for much of your career, running statewide for elective office and serving in public office. How will you make the transition from making political judgments to the kind of non-partisan, non-political frame of mind necessary to serve on the Federal appellate court? What specifically can you tell us to assure us that all litigants who come before you will receive a fair hearing and equal treatment?

Mr. HOWARD. Thank you for that question, Mr. Chairman. It is true that I ran for statewide office—that is, the governorship of New Hampshire—two years ago. That is the only office that I have ever run for that is an elective office.

Fresh out of law school, in 1981, I was hired, I believe, on a merit basis as an assistant attorney general in the New Hampshire Attorney General's office, and later I was appointed to the position of United States Attorney by President Bush, and later appointed as Attorney General in New Hampshire. So I have held statewide public office, but not as an elected official.

Both in the position of United States Attorney and as Attorney General, I believe that I was called upon on innumerable occasions to weigh not only the evidence but the justice of a matter in front of me. Those cases ranged from representing consumers, hundreds of consumers, those people who are in little position to help themselves. I had to make the decision that they needed help and to help them.

It is true that at the same time it was my job, function and duty to represent the State of New Hampshire, as well as the United States Government, as United States Attorney. But I believe that my background is one that shows that I can be fair, that I have been balanced, and that I will continue to do so. Should I be confirmed to this position, I can promise the American people, this committee and the United States Senate my fidelity to those very principles.

Senator KOHL. Mr. Howard, the American Bar Association's Standing Committee on the Federal Judiciary conducts evaluations of every nominee's record, as you know. While a majority of the committee found you qualified for the Federal bench, a minority concluded that you were not qualified.

As you may know, while the committee releases its ratings and vote to the public, it does not explain the basis for its decision. Since that is now a part of the public record, we would like to give you this opportunity, if you wish, to discuss the ABA's evaluation.

Mr. HOWARD. I do not know, Senator, what the reason for the minority evaluation was. I did receive a letter that indicated that a substantial majority of that committee found me qualified, and I believe that my experience as a prosecutor, as an attorney general of my State, as a United States Attorney, as time here at the Department of Justice in Washington as Principal Associate Deputy Attorney General, and most recently as a private practitioner rep-

representing individuals and businesses who have had dealings with the Government of the United States, has led me to a position where I have had considerable experience both at trial and in supervising litigation. One of the things that I have enjoyed most in my career is bringing along young trial lawyers. I have been involved in literally thousands of criminal and civil cases.

Now, I could sit here and speculate that the fact that I am not currently a sitting judge may have had something to do with the minority recommendation, but it probably wouldn't be wise for me and I would simply be speculating. But let me say I agree with the majority of the committee. [Laughter.]

Senator KOHL. Mr. Howard, as a Federal court of appeals judge, you will be called upon to not only interpret case law as it applies to the cases before you, but also to rule on issues that are of first impression for your circuit. How do you intend to approach cases of first impression?

Mr. HOWARD. Senator, as a former attorney general of a State who found it his duty to defend legislation that under the State constitution was presumed constitutional but was often attacked, I have a great deal of respect for the enactments of the legislative body.

I believe that, as a judge, there is a strong presumption of constitutionality of legislative enactments with respect to those constitutional cases that are of first impression. With respect to cases that are factually of first impression in the First Circuit, we always have the opportunity to look to the other circuits, the principles embodied in the Supreme Court precedents, taking into consideration the premise of the question that these would be cases of first impression, look to the language of the statute first. Oftentimes, the answer is right there.

Senator KOHL. Thank you, Mr. Howard.

Senator Hatch?

Senator HATCH. We are happy to welcome all of you here today. It is a singular privilege to be nominated to the Federal courts of this country. These are lifetime appointments that are, I think, among the most important that this country has to give to people. So we want the very best people we can get to be on the Federal bench, and I think each of you qualifies in that regard.

Mr. Howard, I notice you are the son of a policeman. I will bet that left a lasting mark on you.

Mr. HOWARD. Indeed, Senator, and my dad continues to work in law enforcement as a bailiff in a county court.

Senator HATCH. That is great. I notice you graduated from Georgetown Law School and I think that should help you get a quick confirmation, as Senator Leahy graduated from there as well.

Mr. HOWARD. I am aware of that, sir.

Senator HATCH. While working as a prosecutor, you initiated, edited, and put into practice one of the Nation's first effective, comprehensive statewide interdisciplinary protocols to combat domestic violence. As the coauthor along with Senator Biden of the Violence Against Women Act, I am naturally very concerned about that. I am very interested in these issues because of that bill.

Could you explain those protocols to us and how they have helped to prevent violence against women?



Mr. HOWARD. It came as a surprise to me that when I became Attorney General in 1993 in New Hampshire it was still true that emergency personnel, police officers, Senator, social workers, doctors, emergency room nurses did not have a working protocol, and each of those agencies that come into contact with an abused person has their own interest and often didn't speak with one another.

To me, this meant that an abused spouse or child could be further victimized by the system, being forced to tell their story over and over, being brought through the system. And so we in New Hampshire decided that we would seek to bring those entities together, and we worked for over a year on interdisciplinary protocols. We trained over 1,500 police officers in that first year-and-a-half, as well as emergency room personnel, doctors, nurses. I am happy to report, though domestic violence still exists in our State, it has fallen in record numbers. Cooperation is very important, we have found.

Senator HATCH. That is great. I hope people pay attention to what you did there because it is important.

Now, you also support the State's use of the death penalty. In your career as a prosecutor, have you ever had occasion to seek the death penalty?

Mr. HOWARD. Senator, I have not had occasion to seek the death penalty. The State of New Hampshire does have capital punishment on the books, and I am sure there are cases which are appropriate for the death penalty. Under the New Hampshire statute, I have not had that occasion.

Senator HATCH. Now, some of my Democrat colleagues seem to hold the view that because one has personal views, sometimes views derived of religious conviction, they cannot separate their private opinions from their public duty.

As a judge, how will you know to separate private views from your sworn duty as a judge?

Mr. HOWARD. Senator, I have given that question a great deal of thought and yet the answer came to me immediately. A judge is required to enforce, apply, and interpret the law as set down by the Congress of the United States, in line with the binding precedent of the United States Supreme Court, and I will have no difficulty doing that.

Senator HATCH. That is great.

Well, let me just ask a couple of questions to the rest of you. I don't want to ignore the rest of you and all of these positions are extremely important. I have a personal view that, without the courts, we probably wouldn't have a Constitution today because it has been the courts, as far as I am concerned, that have interpreted and kept the Constitution vibrant and alive. So these are really important positions.

Let's start with you, Mr. Anderson, and if we can, we will just go across the bench here. In recent reviews of the latest Supreme Court term, a number of commentators have debated the propriety of decisions striking down various acts of Congress.

Now, I am not asking you about any specific cases, but would like to know generally when do you think it is appropriate for a Federal district court judge or any Federal court to declare a statute enacted by Congress unconstitutional. The quick answer is

whenever it is unconstitutional, but I would like to hear a little more depth than that.

Mr. ANDERSON. Well, Senator, thank you very much for the question. I believe as a district court judge my primary responsibility and main function is to identify the rule of law and to apply it, and for the most part as a district court judge I am there to follow the law as handed down by our circuit court and by the Supreme Court. Absent a constitutional violation, I don't think I am in a position to declare a congressional law unconstitutional.

Senator HATCH. Does anybody else care to comment about that, or do you agree with that comment? Do you care to add anything?

Judge GRIESBACH. I think even district court judges must declare that a law is unconstitutional if, in fact, it contravenes those provisions of the Constitution.

Senator HATCH. I interpreted Mr. Anderson's comment that he would do that if he finds it unconstitutional.

I think what I am going to do is defer to Senator Specter, if I can. He has some questions he would like to ask.

Senator SPECTER. Well, Mr. Chairman, it was my request, if it is acceptable, to have the hearing for Judge Rufe and Mr. Baylson now and then I will excuse myself because I have other pressing commitments.

Senator KOHL. Go ahead.

Senator SPECTER. Judge Rufe, welcome. You bring a distinguished background to the nomination for Federal court. You were in the public defender's office. You have been a common pleas judge for—how long has it been?

Judge RUFÉ. Almost nine years.

Senator SPECTER. What differences, if any, do you see between being a State court judge and a Federal judge?

Judge RUFÉ. Other than the differences in the genesis of common law as opposed to statutory law, I don't see the difference in judging. I think the past eight-and-a-half years on the bench have established that I try to be a good judge, and for that I think the qualities are the same.

I don't think the transition will be difficult in that respect, and I trust that my energy and intellect and my past experience with Federal law and procedure will kick back in, so to speak. I am not concerned about the transition, except to finish up some work. But since I manage a pretty efficient caseload and I don't have a backlog, I think that will be not a problem either.

What I do like to see in judges is what I think will make my transition easier, and that is to remain fair and open-minded, to listen to all sides, to research, to do the right thing, and to follow the law. I don't think that will change, regardless of where I am a judge.

Senator SPECTER. One of the traditional questions asked is a view of interpreting the law as opposed to making the law. There is concern on both sides of the line as to activist judges. How would you define a judge's role and how would you approach that issue or those issues?

Judge RUFÉ. That is a very good question, Senator, for my present role as a State court judge, as well as a Federal judge, if

I should be so honored to be selected. I do think that a judge cannot legislate from the bench. I do think that is for the legislature.

Congress passes laws. We must apply them, interpret them, enforce them. Interpreting laws is what our job is supposed to be as a judge, to make sure the law fits the facts, the people fit the facts, the facts fit the law. I do not believe it is appropriate to legislate from the bench and I do not intend to do so.

Senator SPECTER. What is your view of the appropriate line of authority when a United States district court has the responsibility of reviewing, say, the judgment of the Supreme Court in the State and you find a constitutional infirmity? How comfortable would you be under those circumstances in issuing an order which, in effect, reverses the State supreme court?

Judge RUFÉ. Of course, any reversal of another court, including the highest court of the State, would be undertaken with much hesitation. But if it needs to be done, hard decisions need to be made, I think my record says I know how to make those decisions and I would not hesitate to do so.

I think one of the many types of cases that will face me in the Federal court is habeas corpus petitions, reviewing State trials, criminal cases. I think I am probably as well qualified as anyone to decide those cases because I know what a State record is. And I think if there is a real error, I would not hesitate to reverse. However, I would do so with great care and consideration for my colleagues on the other bench.

Senator SPECTER. And your husband is also a common pleas court State judge?

Judge RUFÉ. Yes, he is.

Senator SPECTER. Would there be any problem in your mind if one of those cases you had to review from a State court involved your husband? I withdraw the question.

Judge RUFÉ. Of course, I wouldn't. Although he probably wouldn't mind, I wouldn't do it.

Senator SPECTER. Mr. Baylson, have you had occasion to seek the death penalty in your role as a prosecuting attorney?

Mr. BAYLSON. Well, Senator Specter, when I was working for you as an assistant district attorney—

Senator SPECTER. You were chief of the Homicide Division, weren't you?

Mr. BAYLSON. I was, for my last year under your tenure.

Senator HATCH. This sounds like a home run ball question to me.

Mr. BAYLSON. There were some occasions where we considered the death penalty.

Senator SPECTER. Watch out. Senator Hatch is tough when his turn comes.

Mr. BAYLSON. But I never had the occasion in a case to personally argue it in front of a jury. But I know you and I discussed it and the position of the office was that it was appropriate to seek it where the facts were appropriate.

Senator SPECTER. Mr. Baylson, what would your work as an assistant D.A., and more specifically as United States Attorney for the Eastern District of Pennsylvania—what bearing would that have on your view as to your capabilities as a Federal trial judge?

Mr. BAYLSON. Well, Senator Specter, if I would be so fortunate as to be confirmed, I would like to look back on my experiences as a prosecutor, first of all, for my knowledge of the criminal process, for my knowledge of substantive criminal law which I have maintained throughout the years, but also for a sense of being fair because I—and as you taught all of us when we worked for you, we were to be fair prosecutors. We were to be advocates, but we were to be fair, and I think that is important, obviously, if someone becomes a judge that you want to be—the judge has to be very fair. He has to be fair and he has to appear to be fair.

As United States Attorney, we had a very much more discretionary kind of jurisdiction in terms of choosing our cases and we chose the cases that had merit, where there was a public impact and where the force of Federal prosecution would do some good. I think that is relevant if I were to become a Federal judge, and I would look upon the Federal process as one in which it was most important for the judge to be fair.

Senator SPECTER. Mr. Baylson, I would like your comments on the question as to a judge's function vis-a-vis legislating and interpreting the law. How do you see yourself working on that line?

Mr. BAYLSON. Well, if I were to be confirmed as a district court judge, I would be most aware of the rulings of the United States Supreme Court and of the Court of Appeals for the Third Circuit, and perhaps other Federal appellate courts as well. I would be bound to follow those and I would not do anything that was not in accord with settled precedent.

I do not think I could, as a district court judge, properly legislate from the bench, so to speak. I think my job would be to take the facts and the record in the case before me and apply settled precedent.

Senator SPECTER. Mr. Baylson, a final question with respect to a cut in pay. This will be a cut in pay?

Mr. BAYLSON. Yes, Senator, it will be, assuming our law firm has another good year.

Senator SPECTER. How do you evaluate taking on a Federal judgeship contrasted with the very substantial diminution in your pay?

Mr. BAYLSON. Well, Senator, I have once before taken a diminution in pay to become United States Attorney, and it was a wonderful opportunity for which I thanked you then and I thank you now, as well. I think public service is very important and I think that there are other things in terms of professional growth and professional contribution other than the amount of money that someone makes.

I have been fortunate that I have been able, through savings, to build up enough money, with my wife, who is a full-time physician, to put our children through college and graduate school, and we are very proud of them. And I think that I can live comfortably on the salary that is paid to a judge.

Senator SPECTER. A very, very last question. When you were appointed an assistant D.A. in November of 1965, your salary was \$6,277 a year.

Mr. BAYLSON. Senator, you have got it on the nose for the last 35 years. Thank you.

Senator SPECTER. Was that an increase or a decrease in your compensation at that time?

Mr. BAYLSON. It was a very marginal increase over what I had been paid as a law clerk, but it was thrilling to work for you and I will cherish it forever.

Senator HATCH. We have all found that to be the case, too. [Laughter.]

Senator SPECTER. I think my confirmation is almost assured now.

Thank you very much, Mr. Baylson and Judge Rufe. Thank you, Mr. Chairman.

Senator KOHL. Well, we thank you, Senator Specter, and we will now continue with the regular order.

Senator SPECTER. Mr. Chairman, may I just add that I have a statement from Senator Santorum, who strongly recommends both Judge Rufe and Mr. Baylson. I also had been asked by Congressman Charles Bass to note that he was here, but had business on the House side, but wanted to come and speak in favor of Mr. Howard.

Senator KOHL. We will enter Mr. Bass' statement into the record.

Senator KOHL. We will now continue and we will go one nominee at a time, myself and then Senator Hatch.

Mr. Anderson, in the past few years, beginning with the *Lopez* decision, the Supreme Court has struck down a number of Federal statutes, including several designed to protect the civil rights of our vulnerable citizens, as being beyond Congress' power.

Taken individually, these cases have raised concerns about the limitations imposed on congressional authority. Taken collectively, they appear to reflect a new federalism crafted by the Supreme Court that threatens to fundamentally alter the structure of our Government.

What advice would you give Senators who are drafting legislation to comply with this new federalism?

Mr. ANDERSON. Senator, of course, I would—I am not sure that I am in a position to advise Senators as to what they should do to comply with this new federalism. But as a district court judge, I believe that I am bound to identify, recognize the law as handed by the Supreme Court, as handed down by the Ninth Circuit Court of Appeals, and to faithfully follow that. It certainly would appear that the Supreme Court has made some new law in a number of different areas and I am committed to following that law and upholding it.

Senator KOHL. Senator Hatch?

Senator HATCH. Well, frankly, I am very pleased with every one of you. I know the process you have been through; it hasn't been an easy one, as it shouldn't be. I have looked over all of your records and each of you is a distinguished person in your own right.

When you take on the Federal bench, there are some people who think and have said, and I may have been one of them, that the closest to being in the godhead is to be on the Federal bench, because you are there for life and you have tremendous, tremendous powers. It is very important that you recognize the limitations of those powers, too, because we have had notable examples of judges

in this country on the Federal bench who seem to think they can do whatever they want to, whatever their viscera tells them.

One of the things I am pleased with with regard to all of you is that I think you understand the importance of following the rule of law, of interpreting the law and not, as you said, Judge Rufe, legislating from the bench.

There are tough questions where you are going to have to make decisions, and some will accuse you of legislating from the bench for having made them. But you will know what those are, and I am convinced that this particular panel is going to know how to handle those problems without going outside of the jurisdictional power that you have.

I am very pleased with you, Mr. Howard. I think you will make a great addition to the Circuit Court of Appeals. From what I hear about you, you will do a great job.

So each of you, I just want to compliment you and tell you how proud I am of you. As long as I am on the Judiciary Committee, I am going to be supporting the Federal judiciary because I think it is extremely important. A lot of people don't realize how coequal and powerful the judicial branch of Government is, but I think each of you will help them to understand that in legitimate ways.

So I don't have any further questions. I am convinced each of you is a good nominee, each of you deserves confirmation, and we intend to put you through as quickly as possible.

I want to thank my friend and chairman for conducting this hearing. I want to thank Senator Leahy for having so many of you appear today, and we want to keep moving in this direction. We do need to work more on the circuit courts of appeals because we are in a crisis mode there, and I hope my colleagues on the other side will help us to get that done.

My thanks to each of you for being willing to accept these positions. It isn't easy to accept positions that pay less than graduate law review students, first-year lawyers, but that is not why you are doing this. You are doing this because you want to serve your country. As you have expressed, Mr. Baylson, public service is extremely important, and I want to compliment each of you for being willing to make those sacrifices and for being willing to do this, and I wish you well on the bench.

Senator KOHL. Thank you, Senator Hatch.

Senator SPECTER. do you have any questions of Mr. Anderson?

Senator SPECTER. Mr. Anderson, I would like your comments on the role of a judge on interpreting versus making law.

Mr. ANDERSON. Yes. Senator, as I have said before, I believe that the role of a judge is to—the primary role is to identify and apply the law and not to legislate from the bench.

Senator SPECTER. Thank you. I have no further questions, Mr. Chairman.

Senator KOHL. Mr. Baylson, in your experience as a U.S. Attorney for the Eastern District of Pennsylvania, you were responsible for overseeing the criminal prosecutions of many repeat violent drug offenders. As you know, the Federal Sentencing Guidelines, in conjunction with statutory mandatory minimums, reduced the amount of discretion Federal judges have during the sentencing process.

As the founder of the largest non-profit provider of drug and alcohol rehab in the State of Pennsylvania, you have also demonstrated a remarkable commitment to and compassion for those who suffer from addiction.

In your view, what role do statutory mandatory minimums and the Federal Sentencing Guidelines play in the ability of our justice system to find the optimum balance between treatment for addiction, rehabilitation of criminals, and punishment for crime?

Mr. BAYLSON. Mr. Chairman, if I were to be confirmed as a district court judge, I would follow the law. I would follow the mandatory minimums that have been enacted by Congress and mandated. I would follow the Sentencing Guidelines that are the law of the land. I would follow the opportunity, if I felt it was appropriate in a particular case, for departures from those mandatory minimums and those guidelines if an appropriate motion was made by the United States Attorney, as is also provided by law.

I would render my best judgment on an individual appearing based on the facts of the case and what Congress has enacted as the appropriate sentence and what the Sentencing Guidelines say. And there have been many circuit court opinions by now interpreting the guidelines, and that would be my job as a district court judge.

I have been active in the drug addiction field personally. I feel very strongly that this is a great challenge to our Nation, and particularly our Philadelphia community, and I have participated in it, as you have noted. But I would put my personal feelings aside and as a judge I would render a decision based on the facts of the case and what the law was as set down by Congress, the Supreme Court, and the Third Circuit.

Senator KOHL. Thank you, Mr. Baylson.

Judge Griesbach, you will be the first Federal judge to sit in northern Wisconsin. Can you tell us what this means to the legal community in the area, as well as to residents generally in that part of the State? Do you believe that you would have a special responsibility to the community as the only Federal judge in this area?

Judge GRIESBACH. I think any Federal judge carries a great responsibility, but especially the first judge in a new court, and I certainly feel that responsibility and will do my best to fulfill that responsibility.

Twenty years ago, Mr. Chairman, when I was a staff attorney at the United States Court of Appeals for the Seventh Circuit, the circuit executive told me there would be a Federal court in Green Bay the following year. I came to Green Bay in part with that in mind. I thought I would be able to use my Federal experience in this new Federal court. Twenty years later, I never would have dreamed that here I am about to sit in that Federal court.

It took a long time to get there, and that whole area owes a great deal to you, Senator Feingold, and Congressman Green for your hard work in creating that court. I will do my utmost to make you proud of the court and to carry out those responsibilities.

Senator KOHL. Thank you, Judge Griesbach.

Judge Lancaster, you have served with distinction as a State supreme court justice. Tell us why you want to leave that position for a job on the Federal bench.

Judge LANCASTER. Thank you, Mr. Chairman. It is not a choice, I think, that all members of the State's highest court would make. I have an unusual amount of Federal trial experience. I think I am the only member of the supreme court—in fact, the only person ever to serve on Minnesota's Supreme Court to have tried as many Federal trials as I have. I was an Assistant United States Attorney, as has been noted, for ten years, and so I have a degree of comfort and familiarity with that environment and feel that I could make a contribution there.

Senator KOHL. Judge Rufe, you have devoted a significant amount of time to providing legal services to disadvantaged persons, particularly in the area of treatment of youth and families in drug and alcohol abuse. As a Bucks County assistant public defender from 1977 to 1980, you represented delinquent, dependent, and abused children. You have also donated your legal services to AIDS patients in hospice care and have served on the board of directors of a number of organizations. So we commend you for your many years of service to your community.

What is the single most important lesson you will take from your experience providing legal services to disadvantaged persons to your new position as a Federal district court judge.

Judge RUFÉ. Thank you for the opportunity to respond to that question because it seems that my entire professional life has been spent not making as much money as I might have, but in working harder than I needed to. And harder means I have taken on some difficult challenges in representing those who can't speak for themselves.

I have found that the experience in representing abuse, dependent, neglected children or their families, or criminal defendants who are indigent, carried over into my experience as a judge very easily because I did understand their positions and I did understand the nature of the problems.

As my colleague and my fellow nominee, Mr. Baylson, has demonstrated, it is the recognition that drug and alcohol abuse and addiction ruin so many facets of society that I don't think that will change if I am a Federal judge. I believe that experience and knowledge, coupled with the idea that there are those who cannot do for themselves, who might need some assistance from the legal community, not as a judge but as a person who promotes pro bono work—I think that would tend to crystalize the problem and compare it to the present laws and to apply those laws fairly in those cases. I do think the experience has done well for me and for the cases that I have sat on and represented.

Senator KOHL. Thank you, Judge Rufe.

Judge RUFÉ. Thank you.

Senator KOHL. Mr. Walter, you have served as a law partner in a firm primarily involved in civil litigation for more than 25 years. What do you think will be the most challenging aspect of making the transition from being a partner in a law firm to being a district court judge?



Mr. WALTER. Well, Mr. Chairman, probably the most difficult transition will be to get back into the criminal area. As an Assistant United States Attorney back in 1970, I gained substantial experience as a Federal prosecutor, but my practice after that period of time shifted into civil litigation. So I think the biggest challenge is going to be to go back into the area of criminal law and make sure that I sharpen my skills as they were when I was a Federal prosecutor.

Senator KOHL. Well, I think, number one, you have all done a very good job and clearly are all very well qualified for the bench. Number two, I have, you are fortunate to hear, some very taxing questions to ask you that might indeed shake each of you. However, there is a vote on, so I am not going to ask those questions.

Unless there are further questions or comments from Senator Hatch or Senator Specter, I will declare this hearing to be at an end and congratulate you for having done such a fine job.

Thank you.

[Whereupon, at 4:56 p.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD



AMERICAN BAR ASSOCIATION      Standing Committee on  
Federal Judiciary  
1400 15th Street, N.W.  
Washington, D.C. 20005-1077  
(202) 662-7760

April 4, 2002

VIA FACSIMILE AND MAIL

The Honorable Herbert H. Kohl  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: **Hon. William C. Griesbach**  
**United States District Court, Eastern District of Wisconsin**

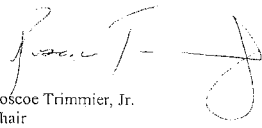
Dear Senator Kohl:

We are transmitting to you for your consideration this Committee's evaluation pertaining to the nomination of William C. Griesbach as Judge of the United States District Court, Eastern District of Wisconsin.

I am pleased to report that, as a result of our investigation, the Committee is of the unanimous opinion that Hon. William C. Griesbach is Well Qualified for appointment as Judge of the United States District Court for the Eastern District of Wisconsin.

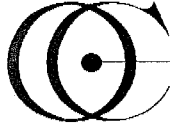
A copy of this letter has been sent to Judge Griesbach for his information.

Sincerely,

  
Roscoe Trimmer, Jr.  
Chair

RT/rdr

cc: Hon. William C. Griesbach  
Hon. Alberto R. Gonzales  
Viet Dinh, Esq.  
ABA Standing Committee on Federal Judiciary  
Robert D. Evans, Esq.



# OUTAGAMIE COUNTY

320 S. WALNUT ST., APPLETON, WISCONSIN 54911  
JUSTICE CENTER

JUDGE JAMES T. BAYORGEON  
CIRCUIT COURT BRANCH NO. 1 PHONE (920) 832-6152

JANHELL M. MINEAU, RF  
COURT REPORTER

NANCY R. JUNGEN  
JUDICIAL ASSISTANT

April 8, 2002

The Honorable Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dirksen Senate Office Building  
Washington, DC 20510

IN RE: The Nomination of Judge William Griesbach to serve as  
Federal District Judge for the Eastern District of Wisconsin

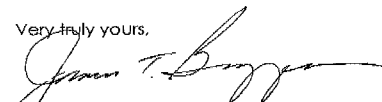
Dear Senator Leahy:

It is my understanding that the nomination of Judge Griesbach to serve as the Federal District Judge will be considered by your committee later this week. I want to voice to you at this time my unequivocal support for Judge Griesbach.

I have known Judge Griesbach as a practicing lawyer when he served with the Brown County District Attorney's office, and have been a colleague of his on the state trial bench. Judge Griesbach is a very learned and competent judge who takes his responsibility seriously and does his utmost best to see that the principles of American Justice are followed and applied to everyone in the court system. He is scholarly, diligent and even-tempered. However, the most important aspect of his character is his absolute integrity and honesty. I believe that Judge Griesbach, when he serves on the federal bench, will be not only a good Judge, but a great judge.

The citizens of this state would be well served to have Judge Griesbach sit on the federal bench and I respectfully urge that you consider his nomination most favorably.

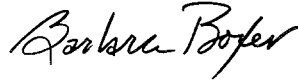
Very truly yours,



JAMES T. BAYORGEON  
Circuit Court Judge  
Branch One Outagamie County

JTB/nrf

cc: Judge Donald Zuidmulder



STATEMENT OF U.S. SENATOR BARBARA BOXER  
ON THE NOMINEES FOR THE U.S. DISTRICT COURT, CENTRAL DISTRICT OF  
CALIFORNIA: PERCY ANDERSON AND JOHN F. WALTER

Mr. Chairman, Senator Hatch, and members of the Senate Committee on the Judiciary, I am pleased to offer my support for the two nominees for the Central District Court of California before you today -- John F. Walter and Percy Anderson. Both are very well regarded by those who know them and their work. I am confident that, should they be confirmed, they will discharge their responsibilities ably, with dignity, integrity and intelligence.

I also want to comment on the process that brought these two accomplished individuals before you today. In a truly bipartisan fashion, the White House Counsel, Senator Feinstein and I worked together to create four judicial advisory committees for the State of California, one in each federal judicial district in the state. Each committee has a membership of six individuals: three appointed by the White House, and three appointed jointly by Senator Feinstein and me. Each member's vote counts equally, and a majority is necessary for recommendation of a candidate.

These two nominees were the first recommendations to come from the Central District committee. It is a tribute to their qualifications that they quickly gained the unanimous support of the committee members and were recommended to the President.

Percy Anderson's experience is broad and impressive. He attended UCLA for both his undergraduate studies and for law school. He began his legal career in public service representing poor people at San Fernando Valley Neighborhood Legal Services where he rose to the position of directing attorney. As further evidence of his commitment to representing those individuals who are traditionally underserved, he also has served on the boards of the Western Center on Law and Poverty and, most currently, the Los Angeles Legal Aid Foundation.

Mr. Anderson continued his public service as a federal prosecutor handling numerous grand jury investigations and criminal prosecutions, as well as supervising other attorneys in the criminal division. He went on to private practice, specializing in a variety of areas of civil litigation, including trial and appellate work. He has tried cases before state and federal courts, including the United States Supreme Court.

Mr. Anderson has an exemplary record and is well-respected. The Central District will benefit greatly from his service, and I strongly support his nomination and quick confirmation.

Mr. Walter also brings a wealth of experience to the federal bench. He also has served as a federal prosecutor and a civil litigator and has tried cases before the California State Supreme Court and the United States Supreme Court, before the 9<sup>th</sup> Circuit Court of Appeals and in the Central District where he has been nominated to serve.

He has volunteered his time and expertise as a member of the Federal Indigent Defense Panel in the Central District, and has served as a judge pro tempore in the Santa Monica Municipal Court. Mr. Walter attended college and law school in Los Angeles; he knows the area well. His extensive experience, his skills and his personal qualities well qualify him to serve on the federal district bench. I strongly support his nomination and urge a swift confirmation vote.

The two men before you today would be the first Bush nominees to fill federal court judgeships in California. I support the consensus process that brought them here, and anticipate



**BROWN COUNTY CIRCUIT COURTS**

BROWN COUNTY COURTHOUSE  
100 S. JEFFERSON STREET  
P.O. BOX 23600  
GREEN BAY, WISCONSIN 54305-3600

April 10, 2002

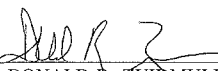
United States Senators  
Washington, DC 20510

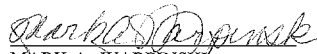
Dear Senators:


It is with great respect and sincere admiration that the judges of the Circuit Courts of Brown County support the confirmation of the Honorable William C. Griesbach to the position of Federal District Judge for the Eastern District of Wisconsin.

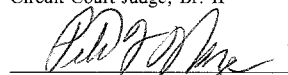
Bill Griesbach will be a valuable asset to the federal judiciary.

Respectfully,

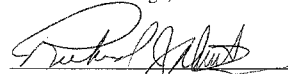
  
DONALD R. ZUIDMULDER  
Circuit Court Judge, Br. I


  
MARK A. WARPINSKI  
Circuit Court Judge, Br. II


  
SUE E. BISCHEL  
Circuit Court Judge, Br. III

  
PETER J. NAZE  
Circuit Court Judge, Br. V

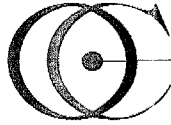
  
J.D. MCKAY  
Circuit Court Judge, Br. VI

  
RICHARD J. DIETZ  
Circuit Court Judge, Br. VII

  
WILLIAM M. ATKINSON  
Circuit Court Judge, Br. VIII

  
RICHARD G. GREENWOOD  
Reserve Judge

  
William J. Duffy  
Reserve Judge



# OUTAGAMIE COUNTY

320 S. WALNUT ST. APPLETON, WISCONSIN 54911 JUSTICE CENTER

JUDGE JOHN A. DES JARDINS

CIRCUIT COURT BRANCH NO. 7 PHONE (920) 832-4727  
FAX (920) 832-5115

GAIL PETERSON  
JUDICIAL ASSISTANT  
TERRI WODILL  
COURT REPORTER  
HEATHER FARWELL  
COURT REPORTER

April 8, 2002

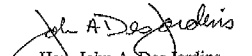
The Honorable Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dinksen Senate Office Building  
Washington, D.C. 20510

RE: Appointment of Judge William Griesbach as Federal District Judge  
for the Eastern District of Wisconsin

Dear Judge Leahy:

I have known Judge Griesbach for several years. We were both state prosecutors and became circuit court judges. I have the greatest admiration for Judge Griesbach. In my opinion, he is the perfect choice to become a federal judge. I have always been amazed at his superior intellect. As great as his intelligence is, his reputation for having a sound judicial temperament is even greater. I know Judge Griesbach has impeccable credentials and will be a phenomenal federal judge.

Sincerely,

  
Hon. John A. Des Jardins  
Circuit Court Judge, Branch 7

JAD:gp



**Peter C. Diltz, Circuit Judge, Branch 2**  
**Door County, Wisconsin**

421 Nebraska, P.O. Box 670, Sturgeon Bay, WI 54235-0670

FAX (920) 746-2470

Mary Ellen Smith, RPR  
 Court Reporter  
 (920) 746-2376

Linda M. Wiegand  
 Judicial Assistant  
 (920) 746-2280

Linda.Wiegand@door.courts.state.wi.us

April 8, 2002

Honorable Patrick Leahy, Chairman  
 United States Senate Committee on the Judiciary  
 Dinksen Senate Office Building  
 Washington DC 20510

Dear Chairman Leahy:

I am writing in support of President Bush's nomination of Judge William Griesbach for the Federal District Judgeship for the Eastern District of Wisconsin. I am a fellow Circuit Court Judge in an adjoining county. I am not aligned with either the Democratic or Republican party, although I certainly have contacts in both parties. Early on in the selection process, when asked, I opined that Judge Griesbach would be the perfect candidate: knowledgeable, decisive, sensitive, and respected by all. He is the rare candidate who members of both parties would be proud to claim as one of their own, although, to my knowledge, he has not had any party affiliations.

The Senate Judiciary Committee has the opportunity to ensure that the citizens of the Eastern District of Wisconsin have the very best person possible as their Federal District Judge. I urge the committee to act favorably on Judge William Griesbach's nomination and thank you for your consideration.

Respectfully yours,

Peter C. Diltz  
 Circuit Court Judge Branch 2  
 Door County, Wisconsin



**Circuit Court, Branch I  
Door County, Wisconsin**

421 Nebraska, P.O. Box 670, Sturgeon Bay, WI 54235-0670

FAX (920) 746-2470

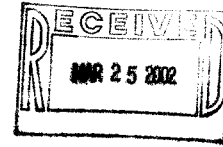
D. Todd Ehlers  
Circuit Judge  
(920) 746-2204

Lisa A. Hartel, RMR  
Court Reporter  
(920) 746-2281

Karin Heldmann  
Juvenile Clerk/Judicial Asst.  
karin.heldmann@door.courts.state.wi.us  
(920) 746-2204

March 22, 2002

The Honorable Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dinksen Senate Office Building  
Washington, D.C. 20510



RE: The Honorable William Griesbach

Senator Leahy:

This letter is being directed to you as Chairman of the United States Senate Committee on the Judiciary. My goal herein is to express to you and the other members of your Committee my support for the nomination of Judge William Griesbach to be a Federal District Judge for the Eastern District of Wisconsin.

For the past approximate twenty months, I have had the express pleasure and honor of serving the citizens of the State of Wisconsin as one of their circuit court judges here in Door County. Door County neighbors Brown County where Judge Griesbach currently presides.

As a judicial colleague of Judge Griesbach's here in the 8<sup>th</sup> Judicial Administrative District in northeastern Wisconsin, I am acquainted with his impeccable and outstanding judicial reputation and esteem. I am confident you and your Committee will be receiving numerous similar endorsements from other members of our local legal and judicial communities who have substantially more impressive credentials and experience than me.



If you will grant me your additional indulgence though, let me briefly relate a personal experience I have had with Judge Griesbach. I believe this situation epitomizes his generous character and commitment to the integrity and competence of the judicial system and process.

As I am sure they do in many other areas of the country, circuit court judges in Wisconsin by State of Wisconsin Supreme Court Rule are allowed to confer and counsel with judicial colleagues regarding procedure and responsibilities. Shortly after I took the bench a year and a half ago, during a recess in a difficult criminal sentencing hearing I called upon Judge Griesbach for some such judicial consultation and advise. In spite of his busy and demanding schedule, Judge Griesbach graciously immediately took my call to discuss and confer with me regarding that matter.

I have had the pleasure of such counsel and conference with a number of other colleagues during my short tenure on the bench. But I content this unselfish and generous act on Judge Griesbach's part to assist and advise me as a new member of the bench validates the sort of person and professional he is. Judge Griesbach is a jurist, and even more importantly, a person of uncompromising integrity, compassion and competence. He has been a credit to our Wisconsin circuit court bench during his tenure in Brown County and I am confident he will continue that tradition as a federal court judge if so confirmed.

I respectfully urge you and the other members of your Committee to support President Bush's nomination of Judge William Griesbach to the newly created Federal District Court for the Eastern District of Wisconsin in Green Bay. I further recommend that your Committee forward that nomination to the entire United States Senate for confirmation. Thank you for your time and consideration in this matter.



Judge D. Todd Ehlers

## Waupaca County Circuit Court - Branch II

---

John P. Hoffmann  
Circuit Judge

811 Harding Street  
Waupaca, Wisconsin 54981  
(715) 258-6425

March 20, 2002

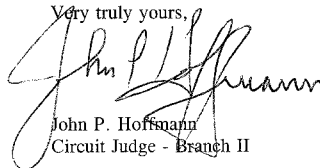
Honorable Patrick Leahy, Chairman  
United State Senate Committee on the Judiciary  
Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing to support the confirmation of the Honorable William C. Griesbach as Federal District Judge for the Eastern District of Wisconsin. I have known Judge Griesbach for the last seven years as we both serve as Circuit Court Judges in the Eighth Judicial Administrative District for state trial court judges in northeast Wisconsin. Judge Griesbach has an excellent reputation within Wisconsin's legal community and amongst the general population. He is widely respected for his fairness to all appearing before him be they attorneys, litigants, and victims. He has demonstrated his intelligence, judicial temperament and work ethic in handling all types of cases. He has an excellent legal background and will be a credit to the federal judiciary. His prompt confirmation as Federal District Judge for the Eastern District of Wisconsin will fill a need in allowing cases to be more promptly heard in the twenty-one northern counties of the Eastern District of Wisconsin.

I strongly urge and recommend the confirmation of Judge William C. Greisbach as Federal District Judge for the Eastern District of Wisconsin and that his confirmation be given early priority.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John P. Hoffmann", is written over a printed name and title.

John P. Hoffmann  
Circuit Judge - Branch II

JPH/yk



**WAUPACA COUNTY CIRCUIT COURT - BRANCH III**

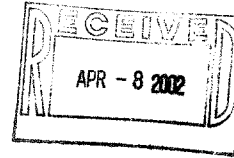
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Raymond S. Huber  
Circuit Court Judge  
(715) 258-6437

811 Harding Street  
Waupaca, WI 54981  
Fax (715) 258-6207

April 5, 2002

Senator Patrick Leahy  
Chairman of the Judiciary Committee  
United States Senate Judicial Committee  
Dirkson Senate Office Building  
Washington, D.C. 20510



Re: Nomination of the Honorable William C. Griesbach for the Federal District of Wisconsin

Dear Senator Leahy:

Please consider this my strongest endorsement for the Honorable William C. Griesbach to the District Court for the Eastern District of Wisconsin. He has the judicial temperament and strong legal background which make him supremely qualified for the position.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "R. Huber", written over a horizontal line.

Raymond S. Huber,  
Circuit Court Judge

RSH/dcb

WAUPACA COUNTY CIRCUIT COURT  
BRANCH I

*Hon. Philip M. Kirk*



March 26, 2002

Hon. Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dirksen Senate Office Building  
Washington DC 20510

**RE: Circuit Judge William Griesbach  
Brown County, Wisconsin**

Dear Senator Leahy,

Please accept this letter in support of President Bush's nomination of the Honorable William Griesbach to serve as the first District Court Judge for the newly created Federal District Court in Green Bay, Wisconsin. I have known Judge Griesbach since he took the bench as a circuit judge in Wisconsin, and find him to be an intelligently gifted judge with a superb work ethic. I am familiar with his qualifications because for six years I was the Chief Judge of the Eighth Judicial District in Wisconsin, which includes Brown County and six other counties. During my tenure, Judge Griesbach both maintained his own caseload and assisted our district administratively by presiding over difficult cases in other counties.

Judge Griesbach would be an excellent Federal District Judge in Green Bay, Wisconsin, and I respectfully request that you confirm his nomination.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Philip M. Kirk".


Philip M. Kirk  
Circuit Court Judge, Br. I

PMK:bjo

Beverly J. Olson  
Judicial Assistant


Waupaca County Courthouse  
811 Harding Street Waupaca, Wisconsin 54981  
715-258-6430 Fax 715-258-6440

Thomas J. McNamara  
Court Reporter



**United States Senate  
Committee on the Judiciary**


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Statement of  
**The Honorable Patrick Leahy**  
 United States Senator  
 Vermont

April 11, 2002

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I would like to welcome the nominees to today's hearing. The nominees before us represent a number of regions of our nation: West, Central, Mid-Atlantic, and Northeast. Many of the nominees' family members have made the long journey with them, and I extend the welcome of this Committee to the friends and families in attendance. I am especially grateful to Senator Kohl for volunteering to chair this important hearing on behalf of the Committee.

Today, we are holding the confirmation hearing for Jeffrey Howard, nominated to the Court of Appeals for the First Circuit; Percy Anderson, nominated to the United States District Court for the Central District of California; Michael Baylson, nominated to the United States District Court for the Eastern District of Pennsylvania; Judge William Griesbach, nominated to the United States District Court for the Eastern District of Wisconsin; Justice Joan Lancaster, nominated to the United States District Court for the District of Minnesota; Judge Cynthia Rufe, nominated to the United States District Court for the Eastern District of Pennsylvania; and John (Jack) Walter, nominated to the United States District Court for the Central District of California.

I am pleased to include Jeffrey Howard on the hearing today at Senator Bob Smith's request. Of the five Court of Appeals nominees who have received hearings in 2002 by the Committee, all have been at the request of Republican Senators. By including Mr. Howard on this hearing, we hope to provide some relief to the First Circuit, an important Circuit that is facing a large caseload. Mr. Howard is the eleventh Circuit Court nominee to receive a hearing before this Committee since the Senate reorganized last July.

That is more than all of the Circuit Court nominees given hearings by the Committee in all of the 1996 Session and all of the 2000 session combined. We have had hearings for more Circuit Court nominees in less than ten months than were held in two of the six and one-half years of Republican control of the Senate.

I am particularly pleased to welcome three nominees who participated in bipartisan selection processes. The Wisconsin nominee, Judge William Griesbach, emerged from a bipartisan commission established by Senator Kohl, Senator Feingold and Chairman Sensenbrenner. He has more than 20 years of diverse legal experience. Percy Anderson and Jack Walter are the first two nominees who have emerged from a bipartisan selection process that Senators

Feinstein and Boxer established last year with the Administration. Both Mr. Anderson and Mr. Walter received unanimous support from the bipartisan commission and appear to be extremely well-qualified. Both come to this Committee with more than 25 years' experience as trial attorneys. All appear to be the type of qualified, consensus nominees that the Senate has been confirming expeditiously to help fill vacancies on our federal courts.

I am also pleased to welcome Justice Joan Lancaster to this hearing. Justice Lancaster comes to this Committee with significant legal experience, as an Associate Justice on the Minnesota Supreme Court, a trial court judge in Minnesota, a Assistant United States Attorney in Minnesota for nearly a decade, and a partner in private practice. Judge Lancaster also has been dedicated to improving the lives of children in her community and has strong bipartisan support.

Judge Cynthia Rufe and Michael Baylson are two more nominees to help fill vacancies on the Pennsylvania District Courts that existed long before the majority shifted last summer. One of the two vacancies has existed since December 31, 1998. Despite the fact that President Clinton nominated David Fineman to fill this judicial vacancy, Mr. Fineman never received a hearing and his nomination was returned to the President without action at the end of 2000. We are pleased to welcome Judge Cynthia Rufe and Michael Baylson to this hearing, less than three months after their nominations by President Bush, and within days of their files being complete. Both nominees have been practicing law for more than 25 years and have a distinguished history of public service.

This is the sixteenth hearing on judicial nominees we have held since the Committee was assigned members on July 10, 2001, after the change in majority. With these nominees we will have held hearings on 55 judicial nominees in less than 10 months. After this hearing there will be less than 20 judicial nominees pending who have home-state Senator support and on which the Committee has received ABA peer reviews who have not participated in a hearing. There will remain 38 vacancies without a nominee, including 17 judicial emergency vacancies without a nominee, however.

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Statement  
Sen. Rick Santorum  
Senate Judiciary Committee

April 11, 2002

Mr. Chairman,

I am submitting this statement on behalf of the Committee's consideration of two nominees for the United States District Court, Eastern District of Pennsylvania. I regret that I cannot be present for today's hearing. I want to express my support for the President's nomination of Cynthia M. Rufe and Michael M. Baylson. We have a significant need to fill federal vacancies throughout Pennsylvania and I am pleased to see the Committee proceeding with their consideration. I also look forward to the timely consideration of additional nominees by the Committee and the Senate.

Cynthia M. Rufe is currently serving as a judge for the Court of Common Pleas in Bucks County, Pennsylvania.. She previously practiced law in Newtown, PA and served as a Deputy Public Defender in Bucks County. Judge Rufe is a graduate of Adelphi University. She also received teaching certification in secondary education at Bloomsburg University. Judge Rufe received her Juris Doctor from the State University of New York at Buffalo Law School.

Michael M. Baylson is currently a partner at Duane Morris & Heckscher, Philadelphia. He previously served as United States Attorney for the Eastern District of Pennsylvania. Prior to that he served as an Assistant District Attorney in the District Attorney's Office in Philadelphia. Mr. Baylson graduated from the University of Pennsylvania Wharton School of Economics & Commerce. He also received his law degree from the University of Pennsylvania Law School.

Again, I would like to commend the Committee for moving forward on a hearing for these qualified nominees and express my support for their nominations. I look forward to their approval by the Committee and by the full Senate in the near future. I thank the Chairman and other members of the Committee.

*Thomas L. Schober*

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2657 Nicolet Drive  
Green Bay, Wisconsin 54311

April 8, 2002

Senator Patrick Leahy, Chairman  
United States Senate Committee  
on the Judiciary  
Durkson Senate Office Building  
Washington, DC 20510

RE: Nomination of Honorable William C. Griesbach as District Judge for Eastern District  
of Wisconsin (Green Bay)

Dear Senator Leahy:

It is with great pleasure that I recommend for your consideration the Honorable William C. Griesbach as a District Judge for the Eastern District of Wisconsin. I have known Judge Griesbach since he first arrived in Green Bay to work in private practice prior to taking the bench. He is one of the most knowledgeable attorneys in our area. More importantly, however, Judge Griesbach is scrupulously honest and compassionate.

Judge Griesbach is the kind of person that we hope will be given the power of this important office. I am confident that he will never abuse his power in any way and that all lawyers appearing before him will know instinctively that his judgments are based on the law and his good faith. As a fellow finalist for this same slot, I can assure you and the Committee that this important position could not be placed in better hands.

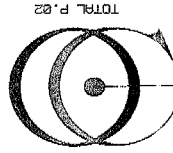
I would also like to personally thank Senator Kohl and Senator Feingold for all their work in making this new judgeship possible.

Very truly yours,

By:

  
Thomas L. Schober





## OUTAGAMIE COUNTY

320 S. WALNUT ST. APPLETON, WISCONSIN 54911 JUSTICE CENTER

JUDGE JOSEPH M. TROY

CIRCUIT COURT BRANCH NO. 3 COURTROOM B  
PHONE (920) 832-5245

PAULETTE L. NORBY  
COURT REPORTER

MARY E. FLINN  
COURT REPORTER

PAULA J. DORSEY  
JUDICIAL ASSISTANT

April 8, 2002

The Honorable Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dinksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Leahy:

Judge William Griesbach represents the finest that the judicial and legal community in the State of Wisconsin has to offer. I have been either the Deputy Chief Judge or Chief Judge since Judge Griesbach began his tenure on the bench. It was my pleasure to also know him throughout his legal career in Green Bay. Judge Griesbach is a man of great integrity, intelligence, and passion for justice. He has always handled his own cases with a great sense of responsibility and notable efficiency. He is also always ready to assist colleagues when called upon.

Judge Griesbach will do honor to the position of Federal District Court Judge. I can't imagine any United States Senator, of any political philosophy, not respecting and welcoming a person of Judge Griesbach's character, integrity, and intellectual capacity to the Federal Court Bench. Thank you for your attention.

Sincerely,

Judge Joseph M. Troy, Chief Judge  
8<sup>th</sup> Judicial District

970

**MARK A. WARPINSKI**  
Circuit Judge

**LEIGH PIGEON**  
Judicial Assistant  
920/448-4112



**CIRCUIT COURT BRANCH II**  
BROWN COUNTY COURTHOUSE  
100 SOUTH JEFFERSON STREET  
P.O. BOX 23800  
GREEN BAY, WISCONSIN 54305-3600

**RUTH DORNER**  
Deputy Clerk  
920/448-4167

**CAROL THOMAS**  
Court Reporter  
920/448-4113

April 9, 2002

The Honorable Patrick J. Leahy  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington D.C. 20510

**RE: Appointment of William Griesbach as a Federal District Court Judge  
for the Eastern District of Wisconsin**

Dear Honorable Patrick Leahy:

You will be considering the appointment of William Griesbach as a Federal District Court Judge to serve the citizens of Northeast Wisconsin. I have known Judge Griesbach for many years in a personal and professional capacity. By confirming President Bush's appointment of Judge Griesbach, you will be selecting an individual of integrity, intellect, and common sense. I believe that those are attributes that hold a person in good stead regardless of the position which the person seeks.

Thank you for your consideration in this matter.

Respectfully submitted,

  
Mark A. Warpinski  
Circuit Court Judge

cc: Honorable William C. Griesbach



**WISCONSIN COURT OF APPEALS**

DISTRICT III  
2100 STEWART AVENUE, SUITE 310  
WAUSAU, WISCONSIN 54401

THOMAS CANE, CHIEF JUDGE  
MICHAEL W. HOOVER, PRESIDING JUDGE  
GREGORY A. PETERSON, JUDGE

Telephone: (715) 848-1421  
Fax: (715) 845-4523

March 19, 2002

The Honorable Patrick Leahy, Chairman  
United States Senate Committee on the Judiciary  
Dirksen Senate Office Building  
Washington, D.C. 20510

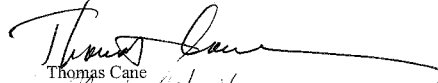
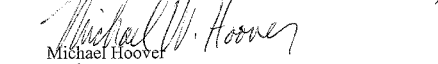
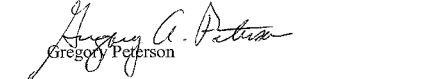
Re: Appointment of Honorable William Griesbach to the  
Federal Court — Eastern District of Wisconsin

Dear Committee Members:

As members of the Wisconsin Court of Appeals, we have had the opportunity to review in detail the decisions of most of the State's judiciary. Brown County Circuit Judge William Griesbach is conspicuously among the most able of the judges whose work we review. His decisions invariably demonstrate scholarship, keen analysis and clear articulation. There is no question that Judge Griesbach has the intelligence and temperament American citizens have the right to expect of a member of the Federal bench. Judge Griesbach's work ethic is also universally recognized and admired by his colleagues.

We believe without reservation that Judge Griesbach would be a superior choice to fill the Federal District Judgeship for the Eastern District of Wisconsin.

Sincerely yours,

  
Thomas Cane  
  
Michael Hoover  
  
Gregory Peterson



**NOMINATION OF JULIA SMITH GIBBONS, OF TENNESSEE, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; DAVID C. GODBEY, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS; ANDREW S. HANEN, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; SAMUEL H. MAYS, JR., OF TENNESSEE, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE; THOMAS M. ROSE, OF OHIO, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO; AND LEONARD E. DAVIS, OF TEXAS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS.**

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**THURSDAY, APRIL 25, 2002**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:30 p.m., in room SD-226, Dirksen Senate Office Building, Hon. John Edwards presiding.

Present: Senators Edwards, DeWine, and McConnell.

**STATEMENT OF HON. JOHN EDWARDS, A U.S. SENATOR FROM  
THE STATE OF NORTH CAROLINA**

Senator EDWARDS. Good afternoon, everyone, and welcome. We want to welcome you to these judicial nomination hearings. We have a very full schedule. In addition to that, the Senators who are present to give statements and Senator DeWine and I have a series of votes that are going to start soon. So we will be substituting for each, one of us leaving to go vote and the other coming back. We want to welcome everyone, welcome the Senators who are here, welcome the nominees and their families, whom I hope we will have an opportunity to meet and have you introduced to us a little later.

It is my understanding that Senator Thompson and Senator Frist may have a conflict problem and so we are going to start, Senator Gramm, with your permission, with Senator Thompson.

**PRESENTATION OF JULIA SMITH GIBBONS, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT AND SAMUEL H. MAYS, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE BY HON. FRED THOMPSON, A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator THOMPSON. Thank you very much, Mr. Chairman. I want to thank the committee very much for scheduling this hearing on the nominations of Judge Julia Smith Gibbons, to be United States Circuit Judge for the Sixth Circuit, and Mr. Samuel Mays, whom we all call "Hardy," to be United States District Judge for the Western District of Tennessee. I appreciate the opportunity to introduce these two outstanding Tennesseans to the committee.

First, as far as Judge Gibbons is concerned, despite her evident youth for such a position, Judge Julia Smith Gibbons has been a judge for over 20 years. I am confident, Mr. Chairman, that the committee will not pass on a more highly qualified nominee this year.

Judge Gibbons was born and raised in Pulaski, Tennessee, which is a small town in south central Tennessee less than 20 miles from where I grew up. She attended Vanderbilt University, in Nashville, from which she received her B.A. magna cum laude in 1972, and where she was elected to be a member of Phi Beta Kappa, the national honor society.

Judge Gibbons then left Tennessee to attend law school in our neighbor to the east at the University of Virginia Law School, where she was a member of the editorial board of the law review and was elected to the Order of the Coif, the national legal honor society.

Upon graduating from law school, she returned to Tennessee to clerk for Judge William Miller, of the Sixth Circuit, the court to which Judge Gibbons has been nominated. In 1976, Judge Gibbons became an associate in the law firm of Farris, Hancock, Gilman, Branam and Lanier, one of whose name partners, Ron Gilman, now serves on the Sixth Circuit through appointment by President Clinton.

After three years practicing law, Judge Gibbons joined the administration of Governor Lamar Alexander as the Governor's legal adviser in 1979. In 1981, Governor Alexander appointed Judge Gibbons to the Tennessee Circuit Court for the Fifteenth Judicial Circuit, which covers Memphis and Shelby County, and she was elected to a full term in 1982.

In 1983, Judge Gibbons was appointed United States District Judge for the Western District of Tennessee by President Reagan, the first woman to hold such a position in Tennessee. At the time, she was the youngest Federal judge in the Nation. From 1994 to 2000, she served as chief judge of the court.

She is very highly regarded by the bar as an exceptional trial judge. While she was being considered for this appointment and since her nomination, I have heard from many lawyers who have practiced before her extolling her virtues as a trial judge. Her rep-

utation is national and it has been recognized by our Chief Justice, who has appointed her to the Judicial Panel on Multidistrict Litigation, the Judicial Resources Committee of the Judicial Conference, and the Judicial Officer Resources Working Group.

Despite her heavy judicial workload, Judge Gibbons has remained active in her church and community, serving as an elder of the Idlewild Presbyterian Church and as a former president of the Memphis Rotary Club. I have information here concerning her family, but I think Judge Gibbons will probably want to introduce them herself.

Mr. Chairman, as members of the Judiciary Committee know, the Sixth Circuit currently has eight vacancies among its complement of judges. The court frankly is in crisis. Judge Gibbons is the first nominee to the Sixth Circuit to be considered by this Congress and the committee can be confident that she will make an exceptional appellate judge. She is extremely smart and hard-working, with an excellent temperament. I am very pleased to endorse her with great enthusiasm to the committee, and I hope the committee will act promptly to report her nomination to the full Senate.

I am also very pleased to introduce Hardy Mays, of Memphis, to the committee. Mr. Chairman, I am especially grateful to Chairman Leahy and the committee for moving Mr. Mays' nomination so quickly. The need is quite urgent.

The Western District of Tennessee typically has four judges assigned to hear cases in Memphis, along with a fifth who hears cases in Jackson. Judge Gibbons and Judge Donald currently hold two of these seats. A third, the one to which Mr. Mays has been nominated, is vacant. A fourth judge is currently on disability leave.

Therefore, if the Senate were to confirm Judge Gibbons to the Sixth Circuit without taking up Mr. Mays' nomination, Judge Donald would be the only serving district judge in Memphis out of the four who normally sit there. So moving Mr. Mays' nomination along with Judge Gibbons' is imperative for litigants with cases pending in the Western District.

Hardy Mays is very well known to the bar of the Western District of Tennessee. He was born and raised in Memphis. He attended Amherst College, from which he graduated cum laude in 1970. Having become acclimated to northern winters, he stayed up north to attend Yale Law School, where he served as editor of the law journal and from which he graduated in 1973.

He returned home to Memphis, where he joined the law firm that is today known as Baker, Donelson, Bearman and Caldwell, the Baker there being our former Senator and mentor Howard Baker, the Senator from Tennessee. He practiced law there for over 20 years. Although he started as a tax and banking lawyer, his practice soon focused on litigation. He has represented clients before the local, state and Federal courts in west Tennessee in a variety of civil cases.

While his practice continued to evolve into one primarily concentrated on banking law issues, Mr. Mays continued to try cases until 1985. During his time as a litigator, he tried over 25 cases to judgment, many of them in Federal court.

His peers recognized his standing at the bar and selected him as a member of the board of directors of the Memphis Bar Association, a position he held from 1985 until 1987. That year, he became managing partner of his firm, a move that forced him to give up litigation. He helped turn the firm into a regional law firm, opening offices in Nashville, Chattanooga, and I might add since that time several more in various parts of the country, including Washington, D.C. He gave up his position as managing partner of the firm in 1988 and returned to the full-time practice of law. By that time, his practice had again evolved into one focusing on health law and related practice areas.

In 1995, Mr. Mays joined the administration of Governor Don Sundquist as his legal counsel. Two years later, he became the Governor's chief of staff. In these positions, he served the people of Tennessee ably and tirelessly, and was highly regarded during his tenure with Governor Sundquist. In 2000, he returned to his former law firm, where he has continued to practice focusing on health care.

Mr. Mays is highly regarded by the bar for his intellect, his legal ability, his fairness, and his unfailing good humor. I am confident he has the ideal temperament to serve in the stressful position of a trial judge.

In addition to his record of professional accomplishments, no introduction of Mr. Mays would be complete without references to his extraordinary commitment to his community. While I will not take time to detail this, I would focus on one aspect of his involvement with his neighbors.

Mr. Chairman, the arts in Memphis would be far poorer without his contribution. He serves or has served as a director of the Memphis Orchestra, the Memphis Botanic Garden, Opera Memphis, the Memphis Ballet, the Playhouse on the Square, the Decorative Arts Trust, and the Memphis Brooks Museum.

So, Mr. Chairman, Mr. Mays is an excellent choice to serve as a Federal district judge. I appreciate the President's decision to nominate him and I am grateful to the committee for holding this hearing so promptly. I urge the committee to move forward to report this nomination to the full Senate so that we may get the judgeship filled because of this great need in Memphis.

So thank you, Mr. Chairman and Senator DeWine, for your courtesy, and Senator McConnell. As three fine lawyers, you know more than most the importance of these positions and how fortunate I believe we are to have these two outstanding people who are willing to serve in this capacity.

Thank you very much.

Senator EDWARDS. Thank you very much, Senator Thompson.

Senator Frist?

**PRESENTATION OF JULIA SMITH GIBBONS, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT AND SAMUEL H. MAYS, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE BY HON. BILL FRIST, A U.S. SENATOR FROM THE STATE OF TENNESSEE**

Senator FRIST. Thank you, Mr. Chairman, and I will abbreviate my comments.



Aaron Burr once said that Tennesseans as a breed can go anywhere and do anything. Today's nominees are living testimony to Burr's observation, and it is a distinct honor for me to join my colleague, Fred Thompson, in introducing to you Judge Julia Smith Gibbons and Samuel "Hardy" Mays, both of Memphis, Tennessee.

Julia Gibbons' distinguished life is an example of the American dream. She has been a trailblazer for women in the legal profession and exemplifies in both her professional and personal life the character that makes us a great Nation, active in her church and community, a supportive and loving spouse to Bill for 29 years, and the proud mother of two wonderful children, Carey and Will.

A product of small-town America and the solid values that her family instilled in her, as valedictorian of her senior class at Giles County High School, she was obviously poised to accomplish great things. As Senator Thompson outlined, after an outstanding record at Vanderbilt University and the University of Virginia Law School, Judge Gibbons headed home to Tennessee to serve then-Governor Lamar Alexander as his legal adviser, and became the first female trial judge of a court of record in Tennessee, and just two years later, in 1983, was confirmed by the Senate as a U.S. District Judge in the Western District of Tennessee.

At that time, Julia became the first female Federal judge in Tennessee, was the second youngest person on the Federal bench in the country, and the second youngest in the Nation's history ever appointed to a district court judgeship. Her legal acumen and human touch soon made her one of the brightest stars in our Federal judicial system.

I have heard from numerous attorneys in the Memphis legal community who appear before Judge Gibbons' court and they have offered generous praise of her work. She is known for being bright, industrious, thorough, even-handed, and someone who truly loves the law. As one constituent who wrote me about her so succinctly said, "she is everything anyone could want in a judge."

For all of these reasons, I am delighted to add my strong endorsement to President Bush's nomination of Judge Gibbons to the Sixth Circuit Court of Appeals. She is ready to go to work and is immediately prepared to do the work of the Sixth Circuit.

It is a wonderful coincidence that Judge Gibbons' hearing and Hardy Mays' are both today, as these two nominees not only know each other professionally, but are close personal friends as well.

Samuel Hardwicke Mays, also known as "Hardy," is a Memphis institution. No one lives life more to the fullest than Hardy, whose passion for the arts, a good book, the law, and public service is known to all.

As have so many others, I first sought his counsel when I decided to run for the United States Senate. Since then, I have turned to Hardy for advice on a variety of occasions, and I value the thoughtful, balanced approach he can bring to any issue. I am proud to call him my friend.

More importantly, he is an outstanding lawyer with a keen intellect. He is fair and impartial, and has enormous compassion for his fellow man. Hardy has demonstrated both in his distinguished legal career with the Baker Donelson firm in Memphis and his life in public service as legal counsel and chief of staff to Governor

Sundquist a unique ability to hear all sides of an issue, to work with people from all walks of life, and to find equitable solutions to virtually any challenge. His personal and professional integrity are above reproach and his even temperament is ideally suited for the Federal bench.

Once again, many outstanding Tennesseans have added their support to Hardy's nomination, including a number of prominent Democrats throughout the State. Former Tennessee U.S. Senator Harlan Mathews was pleased to add his support, stating that "Hardy Mays will be a credit to the Federal bench." I couldn't agree more with Senator Mathews and I am grateful to President Bush for his nomination of an individual who I know will act with fairness to all in a way which will make all of us proud.

Mr. Chairman, I add to Senator Thompson's my presentation to you of Judge Gibbons and Hardy Mays, and urge you and your colleagues on the Judiciary Committee to consider their nominations as quickly as possible.

Senator EDWARDS. Thank you, Senator Frist.

Senator Gramm?

Senator THOMPSON. Mr. Chairman, if I could interrupt, we have another Tennessean testifying before the Finance Committee as we speak. So if the committee would excuse us, we would appreciate it.

Senator EDWARDS. Absolutely. You are excused. Thank you.

Senator FRIST. Thank you, Mr. Chairman.

Senator EDWARDS. Senator Gramm?

**PRESENTATION OF DAVID GODBEY, ANDREW S. HANEN, AND  
LEONARD E. DAVIS, NOMINEES TO BE DISTRICT JUDGES  
FOR THE NORTHERN, SOUTHERN, AND EASTERN DISTRICTS  
OF TEXAS BY HON. PHIL GRAMM, A U.S. SENATOR FROM THE  
STATE OF TEXAS**

Senator GRAMM. Well, Mr. Chairman, let me say that it is easy for me to be brief. I have three nominees. One is Leonard Davis, from Tyler, who is to be a District Judge in the Eastern District. Another is David Godbey, from Dallas, to be a District Judge in the Northern District. The other is Andy Hanen, from Houston, to be a District Judge in the Southern District.

Two of these nominees graduated first in their law class. The other one graduated with high honors from Harvard. They have been either outstanding State judges or officers in the State bar association. They are supported by a broad spectrum of people and practitioners of the law in my State. They have been involved in everything good in their communities.

It is a pretty strong statement, but I doubt on any single day ever in the history of this committee have we had three nominees from the same State that had qualifications equal to the three people that we present to the committee today.

I thank you, Mr. Chairman and members of the committee, for moving forward on these nominees. They were all nominated on the 23rd of January and we are grateful that they have a hearing on such an expedited basis.

Senator EDWARDS. Thank you, Senator Gramm.

Senator Hutchison.

**PRESENTATION OF DAVID GODBEY, ANDREW S. HANEN, AND  
LEONARD E. DAVIS, NOMINEES TO BE DISTRICT JUDGES  
FOR THE NORTHERN, SOUTHERN, AND EASTERN DISTRICTS  
OF TEXAS BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR  
FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman. I will just say a few words about each of these nominees from Texas because Senator Gramm and I have a process through which they go which is rigorous. We have a committee that interviews all the candidates. There were a number of good candidates, but these came out on top.

Andy Hanen is a 1975 cum laude graduate of Denison University, in Ohio. In 1978, he earned his law degree from Baylor University, ranking first in his class. He was president of the Student Bar Association and a member of the Baylor Law Review.

He then founded his own law firm in Houston, where he had significant trial experience, half of which was before Federal courts. He has been named Outstanding Young Lawyer of Texas by the State bar. He has been elected president of the Houston Bar Association and is currently a director of the Texas State Bar. He also gives his time to the community in charitable work and is truly a leader in the Houston community.

David Godbey graduated magna cum laude from Southern Methodist University with degrees in electrical engineering and math. After working as an electrical engineer, he scored in the 99th percentile on the LSAT, entering Harvard Law School and receiving a J.D. degree magna cum laude. He then clerked on the Fifth Circuit, so he is very familiar with the Fifth Circuit.

He presides over the 160th District Court today. He is a State district judge, elected by the people of Dallas County, and has long experience in litigation and appellate law. He has consistently been the highest-rated State civil court judge by the Dallas Bar Association poll, with a 94-percent approval rating by all of the lawyers in the Dallas bar. I think you can see he, too, is a legal scholar and well regarded by his peers.

Leonard Davis, for the Eastern District, earned a mathematics degree from the University of Texas at Arlington, a master's degree in management from Texas Christian University, and graduated number one in his class from Baylor University Law School.

He has practiced civil and criminal law for 23 years in Tyler and now is the Chief Justice of the Civil Court of Appeals in Tyler, Texas. This is the State interim court of appeals in Texas. He is also very active in civic work in the community. He is one of the community leaders in Tyler, Texas, and is on the State Ethics Advisory Commission.

I can't think of three more qualified people in the State of Texas than those that we have before you today, and the two of us urge you to nominate them so that they can go to their benches which are very much needed at this time to be filled.

Senator EDWARDS. Thank you, Senator Hutchison. You and Senator Gramm may be excused. Thank you very much for your statements.

Senator DeWine, I believe you had a statement on behalf of one of the nominees.

**PRESENTATION OF THOMAS M. ROSE, NOMINEES TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO BY HON. MIKE DeWINE, A U.S. SENATOR FROM THE STATE OF OHIO**

Senator DEWINE. Mr. Chairman, thank you very much, and thank you for holding this hearing and presiding.

It is my pleasure and honor today to introduce Judge Thomas M. Rose, Judge of the Greene County Court of Common Pleas, whom President Bush has nominated to serve as a Federal judge in the Southern District of the State of Ohio.

Let me also introduce his wife, Sandy, who is in the front row seated next to Judge Rose; his daughter, Traci; his sister and brother-in-law, Laura and Ned Hinton; his friends, Ron and Brenda Lewis; and his friend and clerk, Bob Berger.

Mr. Chairman, I have known Judge Rose for over 30 years now. He grew up in Lowellville, Ohio, in the Hocking Hills of Ohio. He graduated from Ohio University, graduated from the University of Cincinnati Law School. He is someone who has had a very distinguished career, a proven track record, someone who has a broad range of experience in the practice of law and in law itself.

He has been in the private practice of law. He served as an assistant county prosecuting attorney. He headed the civil division of the Greene County prosecutor's office. Mr. Chairman, in Ohio, as you may know, the prosecuting attorney in each county represents all of the elected officials, everyone from the sheriff to the clerk of courts. He also represents all the township trustees of all the different townships and many of the school boards.

So if you represent all of these different agencies and different boards, you get all kinds of problems. You see all the problems of the county that there are, except the criminal problems, but you see just about everything else.

Judge Rose, from there, at one time became the first juvenile court magistrate in Greene County, again someone who tried all of the juvenile court cases in the county; so, again, a different form of experience, but certainly experience that is very, very important.

For the last 11 years, Judge Rose has served as Common Pleas Judge of Greene County. In Ohio, the Common Pleas is the highest trial bench. It is the court that tries all the major civil cases and tries all the major criminal cases. Judge Rose has a distinguished record on the bench for those 11 years at the Common Pleas level.

If you look at Judge Rose's career, it has been a steady progress, a broad range of experiences. He has handled some very, very tough and complex cases, everything really from presiding over an aggravated murder case where the defendant insisted on representing himself—and we all can appreciate what kinds of problems that presents for everybody in the courtroom, particularly for the judge, and Judge Rose presided over that and presided over it very well—to things such as when he was a prosecuting attorney giving counsel to township trustees over things like line fences and other problems that are very important to the local community.

When we talk about judges and we describe who should be on the bench, we talk about judicial temperament. Judge Rose has judicial temperament. Judge Rose is the type of person that you would want to judge your case, whether you were a practicing law-

yer or whether you were the plaintiff or the defendant in a criminal case. Judge Rose is the type of person that you would want sitting on the bench.

As I indicated, Mr. Chairman, I have known Judge Rose now since 1973, when he and I served as assistant county prosecuting attorneys at the same time. For a period of time, we also practiced law together, but since that time Judge Rose has acquired an unbelievable amount of experience in those 30 years.

But he is really, Mr. Chairman, the same man that I met in 1973, and that is a man of great integrity and great honor, and he is someone whom I am very pleased to recommend to this committee and to the Senate for confirmation.

Senator EDWARDS. Thank you very much, Senator DeWine.

Senator McConnell, would you like to make a statement?

**STATEMENT OF HON. MITCH MCCONNELL, A U.S. SENATOR  
FROM THE STATE OF KENTUCKY**

Senator MCCONNELL. If I could, Mr. Chairman. I understand you have got a lot of people here. I just wanted to stop by and greet the hearing of Judge Gibbons with considerable relief.

As a Senator from the Sixth Circuit, which is 50-percent vacant—8 out of 16 seats are vacant; 7 of those nominations have been made by the President for quite some length of time—I just wanted to come by and express my gratitude that we are having a hearing on at least one of the President's nominees to the Sixth Circuit.

I would like to, Mr. Chairman, just ask that my full statement with regard to the crisis that we have in the Sixth Circuit appear in the record at this point.

Senator EDWARDS. Yes, your statement will be made part of the record.

[The prepared statement of Senator McConnell follows:]

## PREPARED STATEMENT OF SENATOR MCCONNELL

I am very pleased the Chairman is holding this hearing for six of the President's judicial nominees. I am particularly glad, of course, that the circuit court nominee whom the Chairman has chosen to include is a nominee to the Sixth Circuit Court of Appeals.

The Sixth Circuit covers my home state of Kentucky, as well as the states of Michigan, Ohio, and Tennessee. The vacancy crisis in the federal courts of appeals is approaching 20 percent. Even more troubling, the vacancy crisis in the Sixth Circuit is at a dangerous level of 50 percent. Having half the seats of the Sixth Circuit vacant has obviously created major problems for my constituents and for the citizens in other states in the Sixth Circuit.

Let me note a couple of statistics that illustrate my concern. According to the Administrative Office of the Courts, in the last five years, from 1996 to 2001, the average number of matters for which active-status judges in the Sixth Circuit are responsible increased nearly 50 percent. This means that each judge is now having to resolve many more matters than they did just five years ago.

This, in turn, has caused the median time for disposition of an appeal to increase greatly to where the Sixth Circuit is almost the single slowest circuit court. It is four and one-half months slower—which is a full 40 percent slower—than the national average.

What this means is that in other circuits, if you file your appeal at the beginning of the New Year, for example, you get your decision around Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you must wait until Easter of the following year to get your case resolved.

These are alarming statistics. To put a human face on the situation, let me read some comments from judges and practitioners in the Sixth Circuit. Ohio Attorney General Betty Montgomery has said that—numerous death penalty appeals before the Sixth Circuit are experiencing prolonged delays. For example, the case of Michael Beuke has not been acted on in more than two years, and a motion in the case of Clarence Carter has been pending for three years.

Federal district judge Robert Holmes Bell described the Sixth Circuit as in a “crisis” because of the vacancies. He added, “We’re having to backfill with judges from other circuits who are basically substitutes. You don’t get the same sense of purpose and continuity you get with full-fledged court of appeals judges.” Thus, even with “backfilling,” the Sixth Circuit still takes more than 40 percent longer than the national average to resolve cases.

Cincinnati Attorney Elizabeth McCord, as of the end of last year, had been waiting fifteen months just to have oral argument scheduled for her client’s appeal in a job discrimination suit. In the interim, her client died. According The Cincinnati Post, delays like this have become “commonplace” because vacancies have left the court “at half-strength and have created a serious backlog of cases.”

Mary Jane Trapp, president of the Ohio Bar Association, said, “Colleagues of mine who do a lot of federal work are continuing to complain (about the delays). When you don’t have judges appointed to hear cases, you really are back to the adage of ‘justice delayed is justice denied.’”

The point of my discussion is not to point fingers. My friend, the Chairman, handled the district court vacancies in my home state expeditiously and fairly. I note again how much I appreciate his actions in this regard.

With respect to Sixth Circuit vacancies, the President has done his job. He has nominated seven exceptionally well-qualified individuals to the Sixth Circuit, including, of course, the nominee before us today, Judge Gibbons. Some of these nominees have been pending for a year without a hearing.

It is my hope that this Committee, as it did with the district court vacancies in my home state, will begin to act expeditiously to fill circuit court vacancies in general, and Sixth Circuit vacancies in particular. My constituents and the citizens in the other Sixth Circuit states urgently need relief. Today’s hearing is a step in the right direction. I thank the Chairman for that step, and I can only hope that we will see more steps—and at a faster gait—in the future. I thank the Chair.

Senator EDWARDS. I also have a statement from Senator Leahy which will also be made part of the record.

[The prepared statement of Senator Leahy follows:]

## PREPARED STATEMENT OF CHAIRMAN PATRICK LEAHY

I would like to welcome the nominees to today's hearing. The nominees before us represent a number of states across our nation. Many of the nominees' family members have made the long journey with them, and I extend the welcome of this Committee to the friends and families in attendance. I am especially grateful to Senator Edwards for volunteering to chair this important hearing on behalf of the Committee.

Today, we are holding the confirmation hearing for Judge Julia Smith Gibbons, nominated to the Court of Appeals for the Sixth Circuit, Justice Leonard E. Davis, nominated to the District Court for the Eastern District of Texas, Judge David C. Godbey, nominated to the District Court for the Northern District of Texas, Andrew S. Hanen, nominated to the District Court for the Southern District of Texas, Samuel H. (Hardy) Mays, Jr., nominated to the District Court for the Western District of Tennessee, and Judge Thomas M. Rose, nominated to the District Court for the Southern District of Ohio.

With today's hearing, in little less than 10 months, the Senate Judiciary Committee will have held 17 hearings involving a total 61 judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. In contrast, one-sixth of President Clinton's judicial nominees—more than 50—never got a Committee hearing and Committee vote from the Republican majority, which perpetuated longstanding vacancies into this year.

I am pleased to include Judge Gibbons on the hearing today at Senator Fred Thompson's request. Of the six Court of Appeals nominees who have received hearings in 2002 by the Committee, all have been at the request of Republican Senators. By including Judge Gibbons on this hearing, we hope to provide some much needed relief to the Sixth Circuit, which has eight vacancies. Six of those vacancies arose before the Judiciary Committee was permitted to reorganize after the change in majority last summer.

The Sixth Circuit vacancies are a prime and unfortunate legacy of these recent partisan obstructionist practices. Half of the seats on the Sixth Circuit are vacant. Most of those vacancies arose during the Clinton Administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nominations was withdrawn by President Bush in March of last year. Kathleen McCree Lewis, a distinguished lawyer from a prestigious Michigan law firm, also did not receive a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001. Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000.

Some of the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on those consensus nominees. Some were unwilling to move forward knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now eight vacancies on the Sixth Circuit, why it is half empty or half full.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the 6th Circuit nominees hearings. Those requests, not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations. Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations.

The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge noted that, with four vacancies—the four vacancies that arose in the Clinton Administration—the Sixth Circuit “is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court.” He predicted: “By the time the next President is inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a

vote on any of them.” Nonetheless, no Sixth Circuit hearings were held in the last three years of the Clinton Administration, despite these pleas. Not one. Since the shift in majority the situation has been exacerbated further as two additional vacancies have arisen.

When Senator Edwards convenes our hearing this afternoon on the nomination of Judge Gibbons to the 6th Circuit, a hearing we announced last week, it will be the first hearing on a 6th Circuit nomination in almost 5 years. Similarly, the hearing we held on the nomination of Judge Edith Clement to the 5th Circuit last year was the first on a 5th Circuit nominee in 7 years and she was the first new appellate judge confirmed to that Court in 6 years. When we held a hearing on the nomination of Judge Harris Hartz to the 10th Circuit last year, it was the first hearing on a 10th Circuit nominee in 6 years and he was the first new appellate judge confirmed to that Court in 6 years. When we held the hearing on the nomination of Judge Roger Gregory to the 4th Circuit last year, it was the first hearing on a 4th Circuit nominee in 3 years and he was the first appellate judge confirmed in 3 years.

Large numbers of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half—56 percent—of President Clinton’s Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session. From the time the Republicans took over majority control of the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to 33, more than doubling.

Democrats have broken with that recent history of inaction. Nine nominees have been confirmed to the Courts of Appeals in less than 10 months. Judge Gibbons is the 12th nominee to a Circuit Court to receive a hearing in less than 10 months.

I would like to welcome Mr. Hardy Mays of Tennessee to today’s hearing. Mr. Mays is a partner at Baker, Donelson, Bearman & Caldwell in Memphis, Tennessee, and he graduated from Yale Law School in 1973. Several lawyers have written to the Senate expressing strong support for Mr. Mays’ confirmation due to his intelligence, fairness, and good temperament, including J. Houston Gordon, the former Chairman of the Tennessee Democratic Party.

Mr. Mays has spent most of his legal career in private practice, but he also served for five years as legal counsel and then Chief of Staff of Tennessee Governor Don Sundquist, a Republican. Mr. Mays has been involved in more than 50 political campaigns, including some fund raising, on behalf of Republican candidates for President, Senate, Governor and local offices. He is member of the Republican National Lawyers Association. He was a delegate to the Republican National Convention in 2000, and he was on the Executive Committee of the Tennessee Republican Party from 1986 through 1990. Thus, it would be wrong to claim that we will not consider President George W. Bush’s nominees with conservative credentials. We have done so repeatedly.

For example, Judge Rose was previously active in Republican politics in Ohio. I would like to welcome Judge Rose of the Greene County Common Pleas Court in Ohio to this hearing. Judge Rose is strongly supported by both of his home-State Senators. A former assistant prosecutor and private practitioner, Judge Rose was appointed to the state bench over a decade ago by then Governor, now Senator, George Voinovich.

We also have three nominees to the District Courts of Texas who I would like to welcome today. In 2000, Justice Davis was appointed by then-Governor George W. Bush to the position of Chief Justice of the Court of Appeals in Tyler, Texas. Justice Davis has extensive experience practicing as a litigator before state and federal court. He has been nominated by President Bush to the U.S. District Court for the Eastern District of Texas. Judge Godbey is a Dallas County District Court Judge who has been nominated to the federal district court in the Northern District of Texas. He is a former litigator who represented corporate entities in civil and commercial litigation in state and federal trial and appellate courts in Texas and around the country. He has also briefed three cases before the United States Supreme Court, including two cases involving the application of the Voting Rights Act in Texas. Mr. Hanen is nominated to the U.S. District Court for the Southern District of Texas. He has significant legal experience working as a civil trial attorney in private practice for over twenty years, and has been a leader in establishing programs to serve the needs of the disadvantaged. Mr. Hanen appears well-supported by his colleagues in the Houston legal community, and has received bipartisan support.

I would note that Mr. Hanen was nominated to fill the vacancy created by the retirement of Judge Filemon Vela in May 2000. I also recall just two years ago when Ricardo Morado, who has served as Mayor of San Benito, Texas, and was nominated for a vacancy in the Southern District of Texas, never got a hearing and was never



acted upon. President Clinton nominated Ricardo Morado on May 11, 2000 and his nomination was returned to President Clinton without any action on December 1, 2000.

It was not long ago when the Senate was under Republican control, that it took 943 days to confirm Judge Hilda Tagle to the United States District Court for the Southern District of Texas. She was first nominated in August 1995, but not confirmed until March 1998. When the final vote came, she was confirmed by unanimous consent and without a single negative vote, after having been stalled for almost three years. I recall the nomination of Michael Schattman to a vacancy on the Northern District of Texas. He never got a hearing and was never acted upon, while his nomination languished for over two years.

These are district court nominations that could have helped respond to increased filings in the federal courts in Texas if acted upon by the Senate over the last several years. With today's hearing on these three Texas nominees, the Committee will have considered five nominees from Texas in less than ten months and 11 nominees for positions on the trial of appellate court level in the Fifth Circuit, including the first new judge for the Fifth Circuit in seven years. In fact, it was this Senate's confirmation of Judge Edith Brown Clement last fall that created the vacancy to which justice Davis is nominated.

In the past few months, the Senate has also confirmed Judge Philip Martinez to fill a vacancy on the District Court for the Western District of Texas and Judge Randy Crane to fill a vacancy on the District Court for the Southern District of Texas. The Senate has confirmed Judge Kurt Englehardt and Judge Jay Zainey to fill vacancies on the District Court for the Eastern District of Louisiana. The Senate has also confirmed Judge Michael Mills to fill a vacancy on the District Court for the Northern District of Mississippi.

Of course many of the vacancies in the Fifth Circuit are longstanding. Judge Clement was confirmed to fill a judicial emergency on the Fifth Circuit. Judge Martinez and Judge Crane likewise filled what had been judicial emergencies. These many vacancies and emergencies are the legacy of the years of inaction.

For example, despite the fact that President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney, to fill a Fifth Circuit vacancy in July 1997, Mr. Rangel never received a hearing and his nomination was returned to the President without Senate action at the end of 1998. On September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill a vacancy on the Fifth Circuit but that nominee never received a hearing either. When President Bush took office last January, he withdrew the nomination of Enrique Moreno to the Fifth Circuit. The Senate has moved quickly to confirm Judge Armijo in New Mexico and Judges Martinez and Crane in Texas, who were among the very few Hispanic judicial nominees sent so far by this Administration to us.

In contrast, the Judiciary Committee is moving fairly and expeditiously on judicial nominations. Looking at the number of confirmations in similar periods shows that we are confirming President Bush's judicial nominees at a faster pace than the nominees of prior presidents, despite absurd assertions to the contrary.

After all of the floor votes on judicial nominees today, the Senate will have confirmed 50 judges in less than ten months of Democratic leadership of the Senate. The record shows that 48 nominees were confirmed over the first 15 months of the Clinton Administration, a pace on average of 3.1 per month. In the first 15 months of the first Bush Administration, 27 judges were confirmed, a pace of 1.8 judges confirmed per month. Likewise, in President Reagan's first 15 months in office, 54 judges were confirmed, a pace of 3.6 per month. In contrast, in nearly 10 months with a Democratic majority, President George W. Bush's judicial nominees have been confirmed at a rate of 5 per month, a faster pace than for any of the past three Presidents, even those some were working with a Senate majority of the same political party. The number of judicial confirmations in less than 10 months—50—exceeds the number confirmed during all of the 2000, 1999, 1997 and 1996, for out of six full years under Republican leadership.

I commend my colleagues for their efforts to consider the almost five dozen nominees we have had hearings for thus far. Thank you.

Senator DEWINE. I have, Mr. Chairman, if I could, a statement from Senator Hatch, as well.

Senator EDWARDS. That will be made part of the record, also.

[The prepared statement of Senator Hatch follows:]

## PREPARED STATEMENT OF SENATOR ORRIN HATCH

I am pleased that the Judiciary Committee is considering the nomination of six exceedingly well-qualified candidates for the federal bench, and I would like to welcome each of them to the Committee. I especially welcome Andrew Hanen and Leonard Davis who have been waiting ten years for this hearing. They were first nominated for the same position in 1992 but did not get a hearing.

Before we discuss the excellent credentials of today's nominees, however, I must take just a minute to make an observation about how this hearing fits into the bigger picture of the Committee's work on judicial nominations.

As we all know, there is a severe circuit court vacancy crisis. Nearly one in five circuit court seats is vacant all across America. I am afraid that at our current rate of confirmations it will be several years before we meet America's need, unless something changes.

I am glad that we will consider a circuit court nominee today, but I will point out, as a Wall Street Journal editorial did yesterday, that in years past, under Republican leadership, we regularly considered two or more circuit nominees at a time. In fact, we did so on ten different occasions.

I am also pleased that today we will hear from a nominee for the 6th Circuit, Judge Gibbons. The 6th Circuit, which includes Michigan, Ohio, Kentucky and Tennessee, is 50 percent vacant; only 8 of 16 seats are filled. Judge Gibbons will be the first confirmation to the 6th Circuit in 5 years, since 1997. Notably, under recent Republican leadership we confirmed 4 judges to the 6th Circuit Court, all of them President Clinton's nominees.

I must also commend President Bush. He has responded to the circuit court vacancy crisis by rapidly nominating top-notch men and women. The President has nominated superbly qualified nominees who are supported not only by both Democrats and Republicans in their states and cities, but also overwhelmingly by the people that matter most to me, the people who know them. This includes lawyers who practice with them or who appear before them, in the case of the nominees on the bench, whether these attorneys have won or lost their cases.

This is certainly true of the nominees before us today who will have my fullest support.

Judge Julia Smith Gibbons, our nominee to the Sixth Circuit Court of Appeals, is, frankly, an extraordinary nominee. I have reviewed few records of public service and personal accomplishment more outstanding than hers. It seems to me that it was for good reason that in 2000 she received a recognition called "Heroine for Women in the Law Award." It seems a fitting appellation for that award if she received it. Not least of that is the comment made by one attorney who wrote to recommend her, and after praising her accomplishments commented: "I can assure you that she is an equally committed parent." But that is just one of her accomplishments.

Judge Gibbons graduated magna cum laude and Phi Beta Kappa from Vanderbilt University and then Order of the Coif from the University of Virginia, where she was an editor for the Law Review. She went to clerk for the late Honorable William E. Miller on the Sixth Circuit Court of Appeals, where we now hope she will soon return after a distinguished career, including as deputy counsel for Governor Lamar Alexander and almost 20 years on the federal District Court bench, where she has been Chief Judge and an active national judicial leader. She exemplifies the nominees the President has sent us, superbly accomplished, and she enjoys the support of Democrats and Republicans and everyone who knows her work.

Judge Leonard Davis, who has been nominated to the U.S. District Court for the Eastern District of Texas, graduated first in his class from Baylor University School of Law. While in private practice he litigated civil, commercial, and business cases, and several times he was appointed to defend indigent defendants in criminal cases. He has served on the State Ethics Advisory Commission and the State Judicial Districts Board, and he currently serves as Chief Justice of the Texas Twelfth Court of Appeals. As was the case ten years ago, Judge Davis' combination of excellent private and public service promise to make him a highly respected and successful federal judge in Texas.

Judge David Godbey, our nominee to the U.S. District Court for the Northern District of Texas, brings terrific credentials to the bench. A cum laude graduate of Southern Methodist University in mathematics and electrical engineering, and a cum graduate of Harvard Law School, Judge Godbey joined Hughes & Luce, a Dallas firm, handling civil and commercial litigation in federal trial and appellate courts. In 1994, Judge Godbey was elected to a judgeship on the 160th Judicial District Court in Dallas, where he currently serves. I fully support Judge Godbey and believe he will make an excellent federal judge.

Andrew Hanen, our nominee to the U.S. District Court for the Southern District of Texas, is a model of an attorney committed both to the legal profession and to the betterment of society. A graduate of Baylor University School of Law, where he finished first in his class, Mr. Hanen has extensive experience in handling, among other matters, legal and medical malpractice, mass and toxic tort, commercial litigation, and products liability cases. Mr. Hanen is one to be admired for his pro bono work, both in leadership and personal roles. As was the case ten years ago when he was first nominated, Mr. Hanen will make an excellent federal judge.

Samuel H. Mays, our nominee to the U.S. District Court for the Western District of Ohio, has had a long and distinguished career in private practice and an even more distinguished life of public service. Mr. Mays served first as Legal Counsel, then Chief of Staff to Tennessee Governor Sunquist. In this latter capacity, he was the "chief operating officer" for a state with \$19 billion in revenue. He was also responsible for overseeing the Governor's cabinet and entire staff. Mr. May has also served on the Boards of the Memphis Opera, Ballet Society of Memphis, Memphis Brooks Museum of Art Foundation and the Decorative Arts Trust. He will bring to the federal bench not only a rich breadth of experience, a keen and respected legal mind, but also tirelessly displayed love for his community that we need on the federal bench.

Thomas Rose, our nominee to the U.S. District Court for the Southern District of Ohio, has been a Judge on Ohio's Green County Court of Common Pleas for the past 11 years. Before becoming a member of the bench, Judge Rose was a prosecutor with responsibilities ranging from juvenile matters to successfully prosecuting a capital murder case. Judge Rose has also proven that he is a man of integrity. When Senator DeWine, then a prosecutor in Greene County, discovered that his office was being bugged by his superiors, he quit. Judge Rose, a prosecutor in the same office, resigned as well believing that the integrity of the office had been violated. The nominee is also well known throughout Ohio for his support of many charities. He is the kind of jurist and the kind of citizen who will make a great federal judge.

Senator DEWINE. And a statement from Senator Voinovich in regard to Judge Rose.

Senator EDWARDS. And Senator Voinovich's statement, absolutely.

[The prepared statement of Senator Voinovich follows:]

PREPARED STATEMENT OF SENATOR GEORGE VOINOVICH

I am writing to express my strong recommendation for Justice Thomas Rose, whom the President has nominated to serve on the United States District Court for the Southern District of Ohio.

Tom Rose's qualifications for this judgeship are best evidenced through his experience. Tom has been a Judge in the Common Pease Court of Green County, Ohio, since 1991. Judge Rose addresses about 400 civil and 400 felony criminal cases annually. In addition, Rose supervises a Bailiff/Court Clerk, a Scheduling Coordinator, a Court Reporter, a Jury Commissioner and an Adult Probation Department.

Prior to becoming a Judge, Tom Rose worked for two years as a Juvenile Court Referee with delinquent and neglected and abused children. He also was an Assistant Prosecutor serving as a counsel to a variety of local elected officials and government organizations and prosecuting criminal cases. While serving as Assistant Prosecutor, Rose also maintained a private practice working in the areas of civil litigation, business law and real estate transactions. As an attorney, in addition to prosecuting criminal matters, Rose litigated personal injury lawsuits, contract disputes, will contests, adverse possession cases, appeals to administrative agencies and all types of domestic relations matters. Judge Rose is admitted to practice before Ohio courts and all levels of the Federal Court System.

Since I have known Tom Rose, I have found him to be a man of exceptional character and integrity. His professional demeanor and thorough knowledge combine to make him truly an excellent candidate for an appointment to the Southern District. Tom Rose is a committed individual and a trusted leader, and it is my pleasure to give him my highest recommendation.

Mr. Chairman, given the exemplary record of Justice Rose, I am hopeful that his nomination will be voted favorably out of committee, and will be expeditiously moved to the floor of the Senate. Thank you for your personal consideration of this matter.

Senator EDWARDS. Judge Gibbons, I wonder if you would come around, please, and if you will remain standing, please, and raise your right hand?

Do you swear that the testimony you are about to give the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge GIBBONS. Yes.

Senator EDWARDS. Be seated, please.

Judge I know from speaking with you earlier that you have members of your family here and friends. Would you like to introduce the folks who are here with you?

**STATEMENT OF JULIA SMITH GIBBONS, OF TENNESSEE,  
NOMINEE TO BE CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT**

Judge GIBBONS. Yes, thank you, Mr. Chairman. With me today are my husband, Bill Gibbons; our children, Carey, who is a junior at Columbia, our son, Will, is a sophomore at White Station High School in Memphis; my mother, Julia Smith, and I think mother would not be too offended if I told you that I feel very blessed to have here her. She celebrated her 90th birthday last summer.

Senator EDWARDS. Congratulations to her.

Judge GIBBONS. And my brother, John Abernathy Smith, is also here. And I won't name them by name, but I have members of my extended family here, meaning a number of law clerks and also members of the staff of the Panel on Multidistrict Litigation, on which I currently serve.

Senator EDWARDS. Well, welcome to all of them, all the members of your family, all of your friends, all of your professional colleagues.

Judge, you come with an extraordinary record of accomplishment as a judge, and I might add we have had letters of commendation and recommendation from people all over the spectrum about you, all very positive in their praise of the work that you have done.

Judge GIBBONS. Thank you, and I want to thank Chairman Leahy and the entire committee for scheduling this hearing today.

[The biographical information of Judge Gibbons follows:]



## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Julia Smith Gibbons (maiden name: Julia Floyd Smith)
2. Address: List current place of residence and office address(es).  
  
Residence: Memphis, TN  
  
Office: 1157 Clifford Davis Federal Building  
167 North Main  
Memphis, TN 38103
3. Date and place of birth.  
  
December 23, 1950. Pulaski, Tennessee.
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Married to William Lockhart Gibbons, District Attorney General for the Thirtieth Judicial District, State of Tennessee, 201 Poplar Avenue, Memphis, TN 38103.
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Vanderbilt University, 1968-72, B.A. May 1972.  
  
University of Virginia School of Law, 1972-73 and 1974-75, J.D. May 1975.  
  
Vanderbilt University School of Law, 1973-74 (attended Vanderbilt for my second year of law school with the understanding that I would return to Virginia for my third year and my degree).
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1983-present: United States District Judge, Western District of Tennessee. Chief Judge, January 1, 1994-December 31, 2000.

2000-05: Member, Judicial Panel on Multidistrict Litigation.

1981-83: Circuit Court Judge, Fifteenth Judicial Circuit, Memphis.

1979-81: Deputy Counsel and Legal Advisor to Governor Lamar Alexander, Nashville.

1976-79: Attorney (associate), Farris, Hancock, Gilman, Branam and Lanier, Memphis.

1975-76: Law Clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit.

1973-74: Law clerk, Policy Planning Office, Governor's Office, State of Tennessee, Nashville.

1973: Summer employment as law clerk or intern, Office of Minority Business Enterprise, State of Tennessee, Nashville.

1972: Summer employment as remedial reading teacher, West Hill Elementary School, Pulaski, Tennessee.

1991-95: Served as president, vice-president and treasurer of the Memphis Rotary Club and as trustee of the Memphis Rotary Foundation.

1992: Board Member, Economic Club of Memphis.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

My B.A. degree was received magna cum laude, and I was elected to Phi Beta Kappa. In law school I was selected for

membership in Order of the Coif and was a member of the Editorial Board of the Virginia Law Review. I have received other honors as follows: Outstanding Judge of the Year Award, 1985 (given by Young Lawyers Division of Memphis and Shelby County Bar Association, but selected by all local attorneys); Marion Griffin-Frances Loring Award, 1992 (given by Association for Women Attorneys); "She Knows Where She's Going" Award, 1992 (given by Girls, Inc.); Heroine for Women in the Law Award, 2000 (given by Memphis Bar Association). I am a Paul Harris Fellow (Rotary Foundation honor).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member, Committee on Judicial Resources, Judicial Conference of the United States, 1990-99; Chair, 1994-99.

Leader, Judicial Officer Resources Working Group, 1998-99.

Sixth Circuit Judicial Council, 1994-2000. Member of Executive Committee on several occasions during that period.

Member, Planning Committee for Sixth Circuit Judicial Conference on several occasions.

Member, Federal Judges Association.

Member, Tennessee Judicial Conference, 1981-83; served as member of Committee on Uniform Local Rules.

Master Member, Leo Bearman, Sr., American Inn of Court (1994-99).

Honorary member, Memphis Bar Association (honorary membership extended to all judges).

Member, Association for Women Attorneys, Memphis. President, 1993; Organizational Group or Board Member, Association for Women Attorneys Family Mediation Center, 1994.

Member, American Bar Foundation, Tennessee Bar Foundation, Memphis and Shelby County Bar Foundation.

Former member, American Bar Association, Tennessee Bar Association, Tennessee Lawyers Association for Women

(president 1988-89), National Association of Women Judges, Memphis and Shelby County Bar Association Young Lawyers Section (Board for short time 1979), American Judicature Society.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

The Federal Judges Association is the only organization to which I belong that lobbies public bodies. Its lobbying efforts are limited to pay and benefits issues for federal judges before Congress.

Current organizations: Idlewild Presbyterian Church (elder), Memphis Rotary Club, Tennessee Women's Forum, Central Gardens Association.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Court of Appeals for the Sixth Circuit, December 1975; United States District Court for the Western District of Tennessee, December 1976; licensed to practice in Tennessee and admitted to Tennessee Supreme Court and all other state trial and appellate courts and all other courts located in Tennessee, October 1975.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have attached articles from the 1982 Tennessee Bar Journal, the Winter 1984 Vanderbilt Alumnus, the 1990 newsletter of the Tennessee Lawyers Association for Women, the Spring 1996 Memphis Bar Journal, and the October-December 1997 Circuit Rider.



With respect to speeches, I have spoken frequently to bar groups (mostly at CLE seminars), community groups and women's organizations. None of these speeches reflects a position on an issue of constitutional law, although some of the material generally expresses a view as to the importance of the Constitution or the Bill of Rights or explains constitutional issues. The CLE speeches often contain explanations of statutes or case law or ethical responsibilities, but generally do not offer personal views of constitutional or legal policy issues, other than observations about district court implementation of rules, statutes or appellate precedent. For most of my speeches, I have no final text that represents the speech as actually delivered, but rather a draft text often with handwritten modifications. In some cases, I cannot locate any text at all.

I have enclosed speeches that appear to be responsive to the question, although many of them include handwritten notes and typographical errors and have not been carefully edited. I have also enclosed all newspaper clippings I have about speeches, even when I no longer have a text of the speech.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. My last physical examination was on April 26, 2001.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1983-present: United States District Judge, Western District of Tennessee. Appointed by President Ronald Reagan and confirmed by the Senate. Chief Judge, January 1, 1994-December 31, 2000. The district court is a trial court, which handles civil and criminal cases within the jurisdiction of the federal courts.

1981-83: Circuit Judge, Division VI, Fifteenth Judicial Circuit of the State of Tennessee. I was appointed to the position by Governor Lamar Alexander in 1981 and was elected to a full eight-year term in a countywide election in 1982, receiving sixty-nine percent of the vote. Circuit court is a state trial court of general jurisdiction, hearing largely

civil cases but also juvenile and city court appeals. The jurisdiction has no monetary limits.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Despite the difficulty in selecting ten "most significant" opinions, I have chosen ten opinions in a variety of areas which fairly reflect my written judicial work. These include:

In re SCB Computer Technology Securities Litigation, No. 00-2343 (W.D. Tenn. Feb. 16, 2001). (copy attached) This opinion dismisses several consolidated securities fraud cases, based largely upon application of the pleading requirements of the Private Securities Litigation Reform Act of 1995.

Sofamor Danek Holdings, Inc. v. United States Surgical Corp., No. 98-2369 (W.D. Tenn. July 25, 2000). (copy attached) This opinion construes claims and rules on summary judgment motions in a patent infringement action involving a method for implanting a spinal fusion device.

Park Avenue Radiology Assocs. v. Methodist Health Systems, No. 92-2881 (W.D. Tenn. Apr. 1, 1998). (copy attached) This opinion dismisses radiologists' antitrust claims for lack of antitrust standing.

Coger v. Bd. of Regents, No. 89-2374 (W.D. Tenn. Jan. 2, 1997). (copy attached) This opinion dismisses the ADEA claims of public university faculty members based on the Eleventh Amendment immunity analysis articulated in a recent Supreme Court case. The case was one of the first to apply that analysis to ADEA claims. Although Coger was initially reversed by the Sixth Circuit, the Supreme Court ultimately ruled as I had in a case from another circuit in which

certiorari was granted, and the Sixth Circuit vacated its opinion.

Seessel Holdings v. Fleming Cos. and Bruno's, 949 F. Supp. 2d 918 (W.D. Tenn. 1996). In this declaratory judgment action the opinion interprets contract language and relevant case law to determine which defendant company is entitled to purchase plaintiff Seessel's, a local grocery store chain. The parties agreed to waive their appellate rights and to be bound by my decision.

Workman v. Dutton, No. 94-2577 (W.D. Tenn. Oct. 29, 1996). (copy attached) The opinion denies a petition for writ of habeas corpus in a state death penalty case.

Perry v. Simplicity Eng'g, 900 F.2d 963 (6th Cir. 1990). This opinion, written while sitting with the Sixth Circuit by designation, examines the meaning of de novo review in an ERISA case.

Gilland v. Owens, 718 F. Supp. 665 (W.D. Tenn. 1989). This opinion finds certain conditions in the Shelby County Jail unconstitutional.

Miller v. Syntex Labs., No. 81-2826 (W.D. Tenn. May 26, 1988). (copy attached) This opinion dismisses a products liability case involving baby formula both on the basis that there is no expert proof of causation and as a sanction for the conduct of counsel.

Doherty v. S. Coll. of Optometry, 659 F. Supp. 662 (W.D. Tenn. 1987). This opinion finds that an optometry student denied a degree for failure to demonstrate proficiency on instruments is not entitled to recover under the Rehabilitation Act.

(2) No court records are maintained of reversals on an individual judge basis, and I do not have such records. The following list was compiled based on a computer search and my memory, neither of which is infallible. I have included all reversals on any issue, even when the appellate ruling largely affirmed my ruling. I cannot recall any cases in which I was affirmed where the appellate court criticized my substantive or procedural rulings.

United States v. McGahee, 257 F.3d 520 (6th Cir. 2001). The Sixth Circuit reversed defendant McGuire's money-laundering conviction for insufficient evidence and remanded for resentencing on his remaining convictions, which were upheld. McGahee's conviction and sentencing were affirmed in all respects.

United States v. Westley, No. 98-6054, 2001 WL 302068 (6th Cir. Mar. 21, 2001). (copy attached) The Sixth Circuit (2-1 decision) affirmed my summary judgment ruling of a fraudulent conveyance, but reversed my conclusion that the debt was not discharged in bankruptcy. The dissent said the debt was for a tax and not dischargeable.

In re Cannon, 237 F.3d 716 (6th Cir. 2001). Affirming the bankruptcy court, I ruled that a bank's collection efforts under Article 4 of the UCC on deposit accounts held by the debtor constituted a voidable preference. The Sixth Circuit disagreed, concluding that Article 4 granted the bank a fully-secured interest under the bankruptcy code so that it would receive the same amount in a Chapter 7 bankruptcy as when it exercised its Article 4 collection rights.

United States v. Moss, 217 F.3d 426 (6th Cir. 2000). The Sixth Circuit dismissed the indictment on speedy trial grounds. The delay on which the dismissal was based occurred while the case was assigned to another judge (see Judge Batchelder's concurring opinion), but I allowed the prosecution to proceed after the case was transferred to me.

United States v. Adams, 214 F.3d 724 (6th Cir. 2000). The Sixth Circuit affirmed defendant's conviction on twenty-five of the twenty-six counts of conviction and his sentence of life plus 205 years, but reversed one firearms possession count which it concluded should not have been a separate charge.

United States v. Thomas, 211 F.3d 316 (6th Cir. 2000). The Sixth Circuit reversed defendant's sentence, ruling that his prior rapes of two women constituted one predicate episode for sentencing and that, contrary to my decision, defendant was not an armed career offender.

Kellogg Co. v. Exxon Corp., 209 F.3d 562 (6th Cir. 2000). This is a trademark case in which Kellogg alleges that Exxon has infringed its Tony the Tiger trademark (used on Frosted Flakes) through use of a cartoon tiger. I granted summary judgment for Exxon on the grounds that Kellogg had acquiesced in Exxon's use of the tiger, and the Sixth Circuit reversed and remanded for trial.

United States v. Butler, 207 F.3d 839 (6th Cir. 2000). The Sixth Circuit affirmed my decision on several sentencing issues, but concluded that one defendant had not "used" a minor in crime within the meaning of the guidelines and thus should not receive a sentence enhancement on that basis. Two judges also thought the sentencing commission failed to comport with a congressional directive when it eliminated a requirement that a defendant be 21 to receive an enhancement for use of a minor.

United States v. Freeman, 209 F.3d 464 (6th Cir. 2000). The Sixth Circuit reversed my denial of defendants' motion to suppress and found that police did not have probable cause to stop their vehicle.

Shelby County Health Care Corp. v. S. Council of Indus. Workers Health and Welfare Trust Fund, 203 F.3d 926 (6th Cir. 2000). The Sixth Circuit affirmed in large part my grant of summary judgment to a health care provider in a dispute over benefits due from an ERISA fund, but reversed summary judgment on the amount of benefits due.

United States v. Smith, 196 F.3d 676 (6th Cir. 1999). The Sixth Circuit affirmed me on several issues in a complicated sentencing involving weapons violations and assaulting a federal officer, but disagreed with a firearms enhancement.

United States v. Ivy, 165 F.3d 397 (6th Cir. 1998). The Sixth Circuit reversed my denial of a motion to suppress, finding that the government did not meet its burden of establishing the voluntariness of defendant's consent to search his house.

Jones v. United States, 161 F.3d 397 (6th Cir. 1998). The Sixth Circuit affirmed the denial of defendant's petition under 28 U.S.C. § 2255 as to his conviction,

but determined that defendant was entitled to resentencing based on a post-sentencing amendment to the sentencing guidelines.

Coger v. Bd. of Regents of State of Tenn., 154 F.3d 296 (6th Cir. 1998). The Sixth Circuit reversed my dismissal of an ADEA action against a state university on Eleventh Amendment grounds. The Sixth Circuit decision was later vacated, and I was affirmed, after the Supreme Court agreed with my decision in a case from another circuit in which certiorari was granted.

United States v. Calloway, 116 F.3d 1129 (6th Cir. 1997). Defendant in this case was a Federal Express flight engineer, who attacked FedEx crew members and attempted to take over the plane during a flight on which he was a jump seater (employee passenger). The Sixth Circuit affirmed his conviction for attempted aircraft piracy and his life sentence, which represented an upward departure, but reversed his conviction for interference with flight crew members, which it viewed as a lesser included offense of the air piracy charge.

United States v. Guimond, 116 F.3d 166 (6th Cir. 1997). The Sixth Circuit reversed my grant of defendants' motion to suppress, concluding that illegal detention did not automatically establish involuntariness of consent to search vehicle and remanding for further proceedings on the consent issue.

Aetna Cas. & Sur. Co. v. Sunshine Corp., 74 F.3d 685 (6th Cir. 1996). The Sixth Circuit agreed in part with my reasoning in granting summary judgment to insurer which brought a declaratory judgment action to determine insurance coverage, but disagreed with my conclusion that the insurer had no duty to defend or indemnify based on a policy exclusion.

United States v. Scott, 74 F.3d 107 (6th Cir. 1996). The Sixth Circuit affirmed defendant's sentence, but reversed my restitution order, saying that it required defendant to compensate the victim bank for more than it ultimately lost.

Drexel Chem. Co. v. SGS Depaw & Stokoe, No. 94-5564, 1995 WL 376722 (6th Cir. June 22, 1995). (copy

attached) The Sixth Circuit said that I should have permitted discovery or held an evidentiary hearing prior to denying a motion to dismiss for lack of personal jurisdiction and forum non conveniens.

Howlett v. Holiday Inns, Inc., 49 F.3d 189 (6th Cir. 1995). The Sixth Circuit reversed (2-1 decision) my denial of plaintiff's motion to amend to join an additional plaintiff in an ADEA action. The issue related to whether defendant had sufficient notice that class-wide discrimination was claimed; the additional plaintiff had not timely filed an EEOC charge.

East Brooks Books, Inc. v. City of Memphis, 48 F.3d 220 (6th Cir. 1995). The Sixth Circuit reversed in large part my rulings on the constitutionality of a licensing and zoning ordinance for sexually-oriented businesses. Several constitutional issues are involved. A copy of my opinion is included with the cases on constitutional issues attached in response to part 3 of this question.

United States v. Bondurant, 39 F.3d 665 (6th Cir. 1994). The Sixth Circuit ruled that I had improperly applied a vulnerable victim enhancement in sentencing defendant. The appellate ruling was based on Sixth Circuit case law decided after the sentencing.

In re Isaacman, 26 F.3d 629 (6th Cir. 1994). Affirming the bankruptcy court, I ruled that a complaint seeking to have a debt declared nondischargeable was untimely. The Sixth Circuit held that the bankruptcy court had equitable powers to accept the untimely complaint and abused its discretion in failing to do so under the circumstances of this case.

United States v. Smith, No. 93-5732, 1994 WL 228225 (6th Cir. May 24, 1994). (copy attached) The Sixth Circuit reversed my denial of defendant's motion to suppress, finding that the investigatory stop was an unreasonable seizure.

Zurla v. State of Tenn., No. 93-5992, 1994 WL 58980 (6th Cir. Feb 25, 1994). (copy attached) The Sixth Circuit disagreed with my dismissal of a pro se prisoner's claim as frivolous.

United States v. Taylor, 13 F.3d 986 (6th Cir. 1994). The Sixth Circuit affirmed both defendants' convictions and the sentence of one defendant, but reversed the other defendant's sentence based on an issue raised sua sponte by the appellate court at oral argument-whether a defendant could be sentenced to multiple violations of 18 U.S.C. § 924(c) with a single predicate offense.

McClain v. Bureau of Prisons, 9 F.3d 503 (6th Cir. 1993). The Sixth Circuit reversed the denial of a 28 U.S.C. § 2255 petition in part, holding that petitioner was entitled to credit on his federal sentence for certain time in confinement while on state parole.

Lavado v. Keohane, 992 F.2d 601 (6th Cir. 1993). The Sixth Circuit reversed my grant of summary judgment to prison officials on prisoner's 42 U.S.C. § 1983 claim that opening his incoming mail outside his presence and reading it in his presence violated his constitutional rights.

Holmes v. Donovan, 984 F.2d 732 (6th Cir. 1993). This case involved claims by union members under the LMRA and LMRDA against the union, union officers and the Secretary of Labor. I was affirmed on all issues except a statute of limitations issue involving one plaintiff's claim under LMRDA § 101(a)(5); the Sixth Circuit said that a state limitations period rather than that in NLRA § 10(b) should apply.

United States v. Strahan, 984 F.2d 155 (6th Cir. 1993). The Sixth Circuit affirmed my denial of a motion to suppress cocaine, but reversed the denial of a motion to suppress a weapon, which was found in a passenger compartment not within defendant's immediate control.

Jarrett v. Kassel, 972 F.2d 1415 (6th Cir. 1992). The Sixth Circuit reversed my grant of summary judgment to defendant sued by purchasers of fraudulent contracts for future delivery of coal. My ruling was based on the statute of limitations, and the Sixth Circuit found that plaintiffs were entitled to equitable tolling of the limitations period because certain actions of their attorney were attributable to them.



Shelby County Health Care Corp. v. Am. Fed'n of State, County and Mun. Employees, Local 1733, 967 F.2d 1091 (6th Cir. 1992). The Sixth Circuit reversed my ruling that an arbitrator's award reinstating an employee who participated in an illegal strike at a public hospital violated public policy.

Burse v. Gene Reed Ford, No. 91-6174, 1992 WL 137113 (6th Cir. Jun 17, 1992). (copy attached) The Sixth Circuit reversed my dismissal of the case for failure to prosecute.

Weaver v. Weinberger, No. 91-5133, 1992 WL 48321 (6th Cir. Mar. 16, 1992). (copy attached) The Sixth Circuit affirmed the ruling in this Title VII case in all respects, but remanded for further consideration of the attorney fee issue.

Bodie-Rickett and Assocs. v. Mars, Inc., 957 F.2d 287 (6th Cir. 1992). The Sixth Circuit affirmed my ruling that plaintiffs were without standing to bring antitrust claims, but noted that the state claims were improperly dismissed because an independent basis for jurisdiction (diversity) over them existed.

United States v. Goodman, 945 F.2d 125 (6th Cir. 1991). The Sixth Circuit affirmed three of four Travel Act convictions and defendant's conviction under the payola statute, 47 U.S.C. § 508, but reversed one Travel Act conviction for insufficiency of the evidence.

Woolsey v. Hunt, 932 F.2d 555 (6th Cir. 1991). The Sixth Circuit reversed a judgment in favor of a discharged university employee on the ground that the employee did not have a property interest in continued employment because Tennessee did not recognize enforcement of an implied contract against the state and had not waived sovereign immunity with respect to other than express contract claims; thus the employee was not entitled to notice and a hearing before discharge.

Broan Mfg. Co., Inc. v. Associated Distribs., Inc., 923 F.2d 1232 (6th Cir. 1991). The Sixth Circuit affirmed the judgment in this trademark suit involving bathroom fans except as to my refusal to allow

evidence of lost profits; the lost profits claim was remanded for new trial. At that point the prevailing party moved to dismiss its cross-appeal on the lost profits issue, and my decision was affirmed. 932 F.2d 1146 (6th Cir. 1991).

United States v. Martin, 913 F.2d 1172 (6th Cir. 1990). The Sixth Circuit (2-1 decision) disapproved a dual sentencing procedure I was utilizing during the time period when the constitutionality of the sentencing guidelines was uncertain in an effort to avoid resentencing defendants later.

Orr v. I.C.C., 912 F.2d 119 (6th Cir. 1990). The Sixth Circuit reversed my grant of summary judgment to the I.C.C. Its ruling was based on a Supreme Court case decided after my decision.

United States v. Rommann, No. 89-6042, 1990 WL 66823 (6th Cir. May 21, 1990). (copy attached) The Sixth Circuit reversed my grant of a motion to suppress. I concluded the vehicle exception to the search warrant requirement did not apply to a disabled vehicle located at a residence; the Sixth Circuit disagreed.

United States v. Robinson, 887 F.2d 651 (6th Cir. 1989). Defendant's conviction was vacated based on my refusal to give an entrapment instruction. I followed Sixth Circuit precedent at the time of trial, but the Supreme Court changed the law on this point before the appeal was heard.

Doherty v. S. Coll. of Optometry, 862 F.2d 570 (6th Cir. 1988). This case involved an optometry student who was denied a degree when his retinitis pigmentosa prevented him from meeting proficiency requirements on instruments. The Sixth Circuit affirmed my dismissal of plaintiff's Rehabilitation Act claim and my grant of a directed verdict on his breach of contract claim, but reversed the jury verdict on his breach of contract claim.

Owens v. Brock, 860 F.2d 1363 (6th Cir. 1988). The Sixth Circuit ruled that I lacked jurisdiction to review a denial of attorneys' fees in a Federal Employees Compensation Act proceeding.

Holmes v. Donovan, 796 F.2d 173 (6th Cir. 1986). The

Sixth Circuit reversed my ruling that the Secretary of Labor could not compel a rerun election by consent with the union absent exhaustion of internal union remedies by aggrieved party and union members, holding exhaustion was not a prerequisite to the consent agreement.

Farris v. Sec'y of Health and Human Services, 773 F.2d 85 (6th Cir. 1985). The Sixth Circuit reversed my decision affirming the Secretary's denial of claimant's disability claim for SSI benefits, concluding the ALJ had applied an overly strict definition of severe impairment in finding claimant was not disabled.

United States v. Oliver, 766 F.2d 252 (6th Cir. 1985). The Sixth Circuit ordered a new trial after I corrected an erroneous jury instruction. The court felt defense counsel had relied on the erroneous instruction, which was included in instructions reviewed with counsel before closing argument, in making his argument.

In re Martin, 761 F.2d 1163 (6th Cir. 1985). The Sixth Circuit affirmed the exception of a consumer debt from discharge in a bankruptcy proceeding, but remanded for award of attorneys' fees to the creditor.

(3) The federal district courts deal daily with constitutional issues in many contexts, including claims under 42 U.S.C. § 1983, Bivens actions, habeas proceedings and suppression issues. In responding to this question, I have assumed that the Committee is not seeking all rulings in these contexts, which often involve application of settled constitutional principles to a particular set of facts, but rather the more unusual situation where the court is called upon to review the constitutionality of a statute or ordinance or otherwise deal with an atypical constitutional issue. No court records categorize cases in a way that is helpful in response to this question; I have compiled this response based on my recollection and a review of opinions of which I have or could readily obtain copies. It is accurate to the best of my knowledge.

United States v. Daily, No. 00-20241 (W.D. Tenn. Feb. 22, 2001). (copy attached) This decision upholds the Child

Support Recovery Act, 18 U.S.C. § 228, as a valid exercise of Congress' authority under the Commerce Clause of the United States Constitution.

Coger v. Bd. of Regents, No. 89-2374 (W.D. Tenn. January 2, 1997). (copy attached in connection with part 1 of this question) This opinion dismisses the ADEA claims of public university faculty members based on the Eleventh Amendment immunity analysis articulated in a recent Supreme Court case. The case was one of the first to apply that analysis to ADEA claims. Although Coger was initially reversed by the Sixth Circuit, the Supreme Court ultimately ruled as I had in a case from another circuit in which certiorari was granted, and the Sixth Circuit vacated its opinion.

Workman v. Dutton, No. 94-2577 (W.D. Tenn. Oct. 29, 1996). (copy attached in connection with part 1 of this question) The opinion denies a petition for writ of habeas corpus in a state death penalty case.

Barker Bros. Waste, Inc. v. Dyer County Legislative Body, 923 F. Supp. 1042 (W.D. Tenn. 1996). This opinion finds that defendant county officials did not violate the dormant Commerce Clause by considering whether applicants for a residential non-hazardous waste contract would dispose of the waste in a landfill owned and operated by the city and located within the county.

Baby Jane Doe v. Tenn. Dept. of Human Services, No. 93-3083 (W.D. Tenn. Sept. 29, 1995). (copy attached) This decision holds that plaintiffs lacked standing to challenge the constitutionality of the Multiethnic Placement Act.

Tennessee Outdoor Advertising, Inc. v. City of Covington, No. 91-3004 (W.D. Tenn. July 18, 1994). (copy attached) This opinion finds an ordinance regulating outdoor advertising to be unconstitutional because it restricted plaintiff's commercial speech without any justification.

East Brooks Books, Inc. v. City of Memphis, No. 90-2874 (W.D. Tenn. June 21, 1993). (copy attached) After determining that plaintiffs' constitutional challenges to the city's ordinance on the basis of allegedly deficient procedural safeguards had been addressed in the court's earlier decisions, this decision denies plaintiffs' motion to reconsider.

East Brooks Books, Inc., et al. v. City of Memphis, et al., Nos. 90-2874, 90-2956, 91-2098, 91-2078 (W.D. Tenn. May 18, 1993). (copy attached) This opinion upholds the permit provisions of a city ordinance regulating the operation of sexually-oriented businesses after finding that the ordinance provided adequate procedural safeguards, was a content-neutral time, place, and manner restriction, and did not contain overbroad permit, definitional, disclosure or inspection provisions. The opinion finds the fee provisions of the ordinance unconstitutional. There is also a discussion of standing of several parties to challenge various provisions.

East Brooks Books, Inc. v. City of Memphis, No. 90-2874 (W.D. Tenn. Dec. 4, 1992). (copy attached) This opinion dismisses the claims of two plaintiffs on standing grounds.

Tennessee Law Enforcement Youth Found., Inc. v. Millsaps, No. 89-2762, 1991 WL 523878 (W.D. Tenn. Sept. 3, 1991). (copy attached) This decisions upholds a Tennessee statute regulating professional solicitors against a First Amendment challenge.

United States v. Ellwest Stereo Theaters of Memphis, Inc., Nos. 89-20254, 89-20255, 89-20256 (W.D. Tenn. March 19, 1990). (copy attached) This opinion denies a motion to dismiss an indictment, finding that 18 U.S.C. §1466, relating to engaging in the business of selling obscene matter, is not unconstitutionally vague and does not infringe on the private rights of defendants' customers.

United States v. Thomas, 699 F. Supp. 147 (W.D. Tenn. 1988). This opinion finds that the Sentencing Reform Act violated the separation of powers doctrine. The Supreme Court found the act to be constitutional in an opinion in another case.

United States v. Steinman, No. 86-20301 (W.D. Tenn. Nov. 4, 1987). (copy attached) This opinion refuses to dismiss an indictment under 18 U.S.C. §§ 1462 and 1465, finding that the prosecution did not violate defendants' right to fair warning under the due process clause of the Fifth Amendment or have a chilling effect on their First Amendment rights.

Lunati v. Barksdale, Nos. 84-2356, 84-2358 (W.D. Tenn. Jan. 22, 1985). (copy attached) This opinion in a state habeas corpus petition finds that a state criminal statute prohibiting attempts to procure females for prostitution is

not unconstitutionally vague and does not contain an impermissible gender-based classification.

Davis v. Mansfield Metro. Hous. Auth., 751 F.2d 180 (6th Cir. 1984) (opinion I wrote while sitting with Court of Appeals by designation). This decision addresses the necessary procedural safeguards for applicants to and participants in Section 8 housing programs before the housing authority can terminate their participation based on an outstanding claim for past-due rent or damages.

State v. Cooley, No. 82085 R.D. (Circuit Court of Tenn., Fifteenth Judicial Circuit at Memphis May 3, 1982). (copy attached) This opinion upholds a Tennessee statutory procedure under which juvenile adjudications of delinquency based on criminal conduct are heard de novo on appeal to circuit court. The procedure was challenged on double jeopardy grounds.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I was a law clerk to the late Honorable William E. Miller, Circuit Judge, United States Court of Appeals for the Sixth Circuit, from July 1975-May 1976. This was to have been a one year clerkship, but it terminated a month early due to Judge Miller's death.

2. whether you practiced alone, and if so, the addresses and dates;

I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

I was an associate with the private law firm of Farris, Hancock, Gilman, Branan & Lanier, 1620 First Tennessee Building, Memphis, Tennessee 38103, from July 1976-January 1979. This firm is presently known as Farris, Mathews Branan & Hellen, One Commerce Square, Suite 2000, Memphis, TN 38103. From January 1979-June 1981, I was on the staff of Governor Lamar Alexander, State Capitol, Nashville, Tennessee 37219, serving first as Deputy Counsel to the Governor and later as Legal Advisor to the Governor.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

As law clerk to Judge Miller, I worked on a variety of civil and criminal cases, writing pre-argument memoranda for the judge and participating in preparation of opinions. While I was in private practice, I was engaged in a general practice, primarily civil. Although the firm's practice was extremely broad and general in nature and I did not specialize, the area in which I worked most was litigation. While I was on the Governor's staff, my duties included providing legal advice to the Governor and other state officials within the executive branch, coordinating assembly and drafting of the administration's legislative program and review of bills pending before the legislature, working with the State Attorney General's office on lawsuits of interest to the Governor or executive branch, supervising handling of extraditions and clemency requests, and working on certain policy matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My former law firm's typical clients included individuals needing a wide variety of legal services, small businesses and insurance companies for which we did defense work.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

As a law clerk to Judge Miller and a member of the Governor's staff, I did not appear in court at all. In the earlier part of my time in private practice, I appeared in court quite frequently, handling many different types of matters in federal district, circuit, chancery, probate, general sessions, and city courts. During the remainder of my time in private practice I spent more time doing appellate work and handling motions and discovery in complex cases and consequently was in court somewhat less often. Even during the latter period, however, I would describe my court appearances as "frequent" rather than "occasional."

2. What percentage of these appearances was in:
  - (a) federal courts;

Approximately 15%.

- (b) state courts of record;

Approximately 45%.

- (c) other courts.

Approximately 40%.

3. What percentage of your litigation was:
  - (a) civil;



Approximately 95%.

(b) criminal.

Approximately 5% (or less).

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I am unable to give precise figures, but would estimate that I tried around fifteen to twenty cases to verdict or judgment in courts of record. These were primarily simple cases handled in state circuit court. On most of these I was sole counsel, but on a few I was associate counsel.

5. What percentage of these trials was:

(a) jury;

Approximately 10%.

(b) non-jury.

Approximately 90%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Note: This material is largely taken from forms submitted to the Department of Justice when I became a district judge in

1983. I have updated addresses and titles of counsel in the cases. I have provided docket numbers, dates and the names of judges to the extent they are presently available to me.

(1) Dunkin v. Syntex Labs., 443 F.Supp. 121 (1977). This was a products liability case brought by a user of birth control pills who had suffered a stroke, allegedly as a result of such use. J.B. Cobb, who is now deceased, represented the plaintiff; Henry Hancock, 303 Wagner Place, Memphis, TN, 38103,<sup>1</sup> (901)526-5442, and I represented the defendants. United States District Judge Bailey Brown granted defendants' motion for summary judgment. In his opinion Judge Brown held that the manufacturer of a prescription drug has a duty to warn only physicians, and not ultimate users, of risks associated with the use of the drug. This issue had not previously been faced by Tennessee courts, and Judge Brown thus had to make an educated guess as to how they would rule on this issue; nevertheless, it is the first case in which Tennessee law is applied to the scope of the duty to warn. My personal involvement in the case included researching and writing the brief in support of the motion, assisting in argument of the motion, and handling part of the discovery in the case.

(2) Summer Williams, Inc. v. Sears Roebuck and Co. v. Federal Compress and Warehouse Co. and Wells Fargo Co., Circuit Court No. 69852. This was a suit originally brought by Summer Williams against Sears for water damage to property stored in a portion of a warehouse leased by it from the owner of the warehouse, Federal Compress. The damage occurred when a Sears employee, operating a forklift and moving goods on a portion of the premises leased by Sears, struck a sprinkler pipe overhead. Sears filed a third-party complaint for indemnity against Federal Compress, owner of the premises, and Wells Fargo, which had installed the alarm system in the sprinkler system. Leo Bearman, Sr., who is now deceased, represented the plaintiff; Fred Ridolphi, Suite 2200, 165 Madison Avenue, Memphis, TN 38103, represented Sears; Judge Robert A. Lanier, 140 Adams Avenue, Memphis, TN 38103, (901)545-4022, and I represented Federal Compress; Wells Fargo was represented first by Mike Cody, 130 North Court, Memphis, TN 38103, (901)524-5124, and later by Judge John McCarroll,

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<sup>1</sup> Addresses and telephone numbers for lawyers will not be repeated in this section.

Jr., 140 Adams Avenue, Memphis, TN 38103, (901)545-4022. Circuit Judge William W. O'Hearn granted the third-party defendants' motion for summary judgment in 1976, and his ruling was ultimately affirmed by the Court of Appeals in January 1979, in an unreported opinion, Shelby Law No. 2, which reaffirms the principle that parties may contractually limit their liability. The Tennessee Supreme Court denied certiorari. My personal involvement in the case included preparing the motion for summary judgment and the brief in support of the motion, arguing the motion in the trial court, researching and writing two appellate briefs, arguing the case twice before the Court of Appeals, and handling several other miscellaneous motions and other matters in the trial court.

3. U.S. Trust, Merrill Lynch and E.F. Hutton v. Gibson County Mun. Water Dist., Nichols Eng'g Servs., Inc., et al., (C-77-2556, assigned to United States District Judge Robert M. McRae, Jr.). This was a lawsuit brought by purchasers of Gibson County Water district bonds against the Water district and fourteen other defendants, seeking rescission of the purchases and money damages of \$10,000,000. The suit alleged fraud in the sale of the securities in violation of federal and state law, fraudulent and negligent misrepresentation and various other theories of recovery. Emmett Marston, Suite 1100, 22 North Front Street, Memphis, TN 38103, (901)522-9000, and William J. Landers, FICC, Suite 260, 700 Colonial Road, Memphis, TN 38117, (901)684-7400, represented the plaintiffs; Henry Hancock and I represented defendant Nichols Engineering Services, which prepared engineering studies for construction of the District. Attorneys representing other defendants in the case at the time I was involved in it were as follows: Tom Cates, 130 North Court, Memphis, TN 38103, (901)524-5104 (A.S. Hart); Hal Holmes (deceased), (Gayle Malone); Ray Beliles, 1709 Kirby Parkway, Memphis, TN 38120, (901)755-5400 (Water District); Bob Ratton, present address unknown (A.S. Hart); Jim McDonnell, Jr., Suite 650, 6075 Poplar Avenue, Memphis, TN 38119, (901)537-1000 (Union Planters Bank); Everett Gibson, Suite 1010, 65 Union Avenue, Memphis, TN 38103, (901)853-2463, (Cheseman, Thompson); Robert J. Warner, Jr., 214 Second Avenue, #300, Nashville, TN 37201, (615)255-2191 and William W. Earthman, III, Suite 1600, 414 Union Street, Nashville, TN 37219, (615)252-2304 (Commerce Union Bank). My personal involvement in the case consisted of drafting all pleadings filed by Nichols and handling all discovery matters in this case until the time I left the Farris firm; I was essentially doing whatever needed to be done in the

case without supervision. Although plaintiffs had carried out a great deal of discovery, the case was not near conclusion at the time I left the firm. The case was ultimately settled.

4-5. Kindle Davis v. Rosenthal and Co.  
Charles Collier v. Rosenthal and Co. (No. 78-2196, Judge Bailey Brown). Plaintiffs in these cases were purchasers of London commodity options who sued the brokerage firm through which they bought the options, alleging various acts of fraud and misrepresentation and failure to make proper disclosure in violation of the Commodity Exchange Act, 7 U.S.C. § 1 et seq. and pertinent regulations and also asserting common law theories of liability. The cases were filed in federal district court in Memphis. Henry Hancock and I represented the plaintiffs; Carl Langschmidt, Suite 700, 80 Monroe Avenue, Memphis, TN 38103, (901)524-4974, represented defendants. I did much of the work necessary to prepare for filing suit, drafted the complaints, and handled substantial parts of the discovery and other trial preparation in the cases until the time I left the Farris firm. The cases were ultimately tried before U.S. Magistrate James H. Allen by consent of the parties. A judgment was entered in favor of Davis for \$137,000.00., and the magistrate judge held that Collier was not entitled to recover. A compromise settlement was reached prior to any post-trial proceedings.

6. Parrish v. Cox Oil Co., 586 F.2d 9 (6th Cir. 1978). This was an action by a service station operator against a wholesale gasoline distributor, alleging violations of the price discrimination provisions of the Robinson-Patman Act. Tim Schaeffer, Sr., Suite 101, 779 Walnut Knoll Lane, Eads,, TN 38028, (901)867-7100, represented the plaintiff; Henry Hancock, Mike Kaplan, Suite 1300, 100 Peabody Place, Memphis, TN 38103, (901)761-1263, and I represented the defendant. At trial United States District Judge Bailey Brown found that plaintiff had not established a prima facie case of liability under the Robinson-Patman Act. The Sixth Circuit Court of Appeals affirmed, holding that the findings and conclusions of the trial court were not clearly erroneous and were supported by the evidence. I assisted in preparation and trial of the case, did much of the research on the appellate brief, and argued the case on appeal before the Sixth Circuit.

7. City of Bartlett v. Hoover, 571 S.W.2d 291 (Tenn. 1978).

This case arose out of violation by defendant of a Bartlett city ordinance which prohibited pay-offs on pinball machines in lieu of award of additional games. Defendant challenged the constitutionality of the ordinance, arguing that it was in conflict with the state law, and prevailed in the trial court and on direct appeal to the Tennessee Supreme Court. George McCrary, Suite 103, 2868 Summer Oaks Dr., Bartlett, TN 38134, (901)388-1000, represented the City of Bartlett; Henry Hancock and I represented the defendant. I researched and prepared the brief in the Supreme Court and assisted in arguing the case.

8. Robert Campbell v. Dobbs Ford and Guardsmark, Inc., Circuit Court No. 74448. In this case plaintiff, after being fired from employment at Dobbs Ford because he failed a lie detector test, sued his employer and Guardsmark, which administered the test, for defamation. Plaintiff was represented by Tim Schaeffer; Frank Glankler, Suite 1700, One Commerce Square, Memphis, TN 38103, (901)525-1322, represented Dobbs Ford; and Judge Robert A. Lanier and I represented Guardsmark. Circuit Judge James M. Tharpe granted defendants' motion for summary judgment and his ruling was affirmed in April 1978, by the Court of Appeals, which held that plaintiff's voluntary signing of a statement releasing Guardsmark from all claims arising out of the exam precluded liability on the part of Guardsmark. My personal involvement in the case consisted of researching and preparing the memorandum brief in support of the motion for summary judgment, researching and writing the appellate brief, and arguing the case in the Court of Appeals.

9. Klutz v. Randolph Eng'g, et al., No. 76-374. Plaintiff in this case, a maintenance superintendent at the Memphis Bulk Mail Center, fell from a concrete platform without guardrails at the center and sued various parties involved in construction of the center, alleging negligence and strict liability in tort. The case was brought in federal district court in Memphis. The late J.W. Kirkpatrick represented plaintiff; Judge Robert A. Lanier and I represented Randolph Engineering, which erected certain platforms and catwalks at the center, and Leo Bearman, Sr., and Cecil McWhirter, 73 Union Avenue, Memphis, TN, (901)522-1813, represented other defendants. The suit was dismissed as to Randolph following the filing of a motion for summary judgment by Randolph. My personal involvement in the case included preparing and filing the motion for summary judgment and supporting brief and handling some of the discovery in the case.

10. Walker v. Celotex. Plaintiff Walker sustained injuries when part of a roof on which he was working collapsed. He collected worker's compensation benefits from his employer and then filed a third party action in federal district court in Memphis against Celotex, owner of the premises and general contractor for the project, alleging breach of its duty to furnish him a safe place to work. Henry Hancock and I represented the plaintiff; Judge Jerome Turner, who is now deceased, represented defendant. My involvement in the case consisted of doing the initial research to determine whether such an action could be maintained under Arkansas law, participating in drafting the complaint and doing a substantial portion of the discovery and trial preparation until the time I left the Farris firm. The case was ultimately settled.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

From 1990-99 I was a member of the Judicial Resources Committee of the Judicial Conference of the United States and from 1994-99 served as its chair. The responsibilities of this committee include making recommendations to the Conference about personnel policy for the judiciary and judgeship requests. While chair of that committee, in 1998-99, I served as leader of the Judicial Officer Resources Working Group, a group of committee chairs charged with examining issues of judge and resource utilization and their impact on judgeship needs.

In my own court, I served as Chief Judge from January 1, 1994-December 31, 2000. I was also acting chief judge for a period before I became Chief Judge due to the illness of the Chief Judge at that time. In these roles I had substantial responsibility for court administration and policy. During periods when I was not Chief Judge, some of the more significant matters in which I was involved included a comprehensive revision of our local court rules and development and implementation of our court's Civil Justice Reform Plan.

As a judicial officer, I have become an increasingly active participant in settling cases and have had some mediation training. While most of our settlement conferences are handled by magistrate judges, on occasion I handle conferences for another judge or do conferences in my own cases, generally at the request of the parties. I have been successful in resolving a number of large complex cases in which a trial would have significantly burdened the court's resources.

While I was a member of Governor Alexander's staff, I had responsibility for coordinating the assembly of the administration's legislative package, including the process of insuring that the bills were well-drafted and desirable from a policy standpoint. I also coordinated the process by which the administration reviewed all bills introduced in the General Assembly to determine whether the administration should take a position on them and, if a position was taken, the content of that position. After a bill was passed, it was my responsibility to review the bill and make the Governor aware of any issues with respect to his action on the bill. Finally, on two separate occasions, I was involved in revision of the procedures and policies for reviewing clemency applications, both before the Board of Paroles (which reviewed clemency applications) and in the Governor's office. Just prior to Governor Alexander's taking office, there was a clemency-selling scandal in the Governor's Office. The clemency procedures were thus a priority for him, as was the policy of granting clemency very sparingly and only in the most extraordinary cases.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will continue to follow the federal statutes and the Code of Judicial Conduct, both of which govern conflicts issues for federal judges. On a practical level, there are obviously cases I cannot hear because of my husband's job as District Attorney General. These are less numerous than in years when he was in private practice or held other local elective office. My husband's political involvement is also a source of some conflicts issues. With respect to financial conflicts, we at this time own no individual stocks or bonds and have directed that our investments be placed only in mutual funds, largely to avoid conflicts.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)



My financial disclosure report is substituted.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for). (See attached net worth statement and schedules.)
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Prior to becoming a judge, I did substantial volunteer work for political candidates. I have never held a campaign position or title.

AO-10 (w)  
Rev. 1/2000FINANCIAL DISCLOSURE REPORT  
Nomination ReportReport required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Gibbons, Julia S.		2. Court or Organization US Ct. of App. for Sixth Cir.	3. Date of Report 10/10/2001
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) US Cir. Judge-now Dist. Judge		5. Report Type (check type) X Nomination, Date 10/09/2001 Initial Annual Final	6. Reporting Period 01/01/2000 to 09/30/2001
7. Chambers or Office Address 1157 Federal Bldg. 167 North Main St. Memphis, TN 38103		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

## I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	
2	
3	

## II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	
3	

## III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2000-01	(Spouse) State of TN - salary as district attorney general	
2 2000-01	(Spouse) Shelby County - county supplement to salary as district attorney general	
3 12/00	(Spouse) Stokes Bartholomew Evans & Petree, P.C. fee income collected in 2000 for work performed prior to 11/01/96 (See Part VIII)	
4		

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Julia S. Gibbons

Date of Report

10/10/01

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

## SOURCE

## DESCRIPTION

☐

NONE (No such reportable reimbursements.)

1

EXEMPT

2

3

4

5

6

7

## V. GIFTS. (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

## SOURCE

## DESCRIPTION

## VALUE

☐

NONE (No such reportable gifts.)

1

EXEMPT

\$

2

\$

3

\$

4

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children. See pp. 32-33 of instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

☐

NONE (No reportable liabilities.)

1

Sallie Mae Servicing Corp.

PLUS Educational Loan

L

2

Spouse - Evans &amp; Petree Employee Retirement Plan

Loan to spouse from his 401(k) account (see Part VIII)

Paid in full prior to end of reporting period

3

4

5

6

\*Value Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000  
 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Julia S. Gibbons

Date of Report

10/10/01

## VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 14-17 of Instructions.)

A Description of Asset (including trust assets)  <i>Place (X) after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., div., int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy/sell, transfer, redemption)	(2) Date Month Day	(3) Value Code (A-F)	(4) Gain Code (A-F)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets,									
1 IRA Equitable Life Annuity- assets in Equivest	A	int	K	T	EXEMPT				
2 IRA Equitable Life Annuity- assets in Equivest Guarntd	A	int	K	T	"				
3 Interest account									
4 Putnam Voyager Fund	B	div. & cap.gains	K	T	"				
5 Series EE U.S. Savings Bonds	A	int.not rec'd or	J	T	"				
6		credited during yr							
7 Nat'l Bank of Commerce acct-Memphis, TN	A	int	J	T	"				
8 Evans & Petree 401(k) Plan (self-directed plan-see Part VIII)									
9									
10 1) Investment Co. of America d/b/a The Amer. Funds Group	B	div	K	T	"				
11 2) Bedford Money Market Fund (Morgan Keegan)	A	div	K	T	"				
12 3) Schwab Institutional Brokerage Trust Acct	none		K	T	"				
13									
14 Federal Bldg. Federal Credit Union Acct (X)	A	int	J	T	"				
15 State of TN 401(k)									
16 Union Planters bank acct	A	int	J	T	"				
17 Schwab Value Advantage Fund (money market)	C	div	L	T	"				
(1) Stock funds									
Janus Adviser Worldwde	none			sold in entirety	"				

1. Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4) P=\$50,001-\$100,000 B=\$1,001-\$2,500 Q=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=More than \$5,000,000 E=\$15,001-\$50,000	2. Value Codes: J=\$15,000 or less (See Col. C1, D3) N=\$250,001-\$500,000 K=\$15,001-\$50,000 O=\$500,001-\$1,000,000 L=\$50,001-\$100,000 P=\$1,000,001-\$5,000,000 M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000	3. Value Method Codes: Q=Appraisal (See Col. C2) U=Book value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market
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Julia S. Gibbons

Date of Report

10/10/01

D. Description of Asset (including transaction)		B. Income during reporting period		C. Gross value at end of reporting period		D. Exclusions during reporting period				
E. If not exempt from disclosure:		(1) (A-H)	(2) (I-K)	(3) (L-P)	(4) (Q-W)	(1) (X-Z)	(2) (AA-AD)	(3) (AE-AH)	(4) (AI-AL)	(5) (AM-AP)
None (A) After each asset, transfer from prior disclosure		Yield (A-H)	Div. or interest (I-K)	Value (L-P)	Value Method Code (Q-W)	Buy, sell, or redemption (X-Z)	Date Month Day (AA-AD)	Value Code (AE-AH)	Gain Code (AI-AL)	Identity of buyer/seller (if private transaction) (AM-AP)
NONE (No reportable income, assets, or transactions)										
18	Oakmark Select Fund	none		J	T	EXEMPT				
19	Schwab 1000 Fund-Select	none		J	T	"				
20	Weitz Partners Value Fund	A	div	J	T	"				
21										
22	White Oak Growth Stock Fund	none		J	T	"				
23	Nasdaq 100 Shares	none		J	T	"				
24	Red Oak Technology	none		J	T	"				
25	Federated Communication	none		sold in entirety		"				
26										
27	Invesco Telecommunication Fd	none		sold in entirety		"				
28	Eaton Vance Worldwide Healthcare	none		J	T	"				
29										
30	I-shares U.S. Healthcare	A	div	J	T	"				
31	Scudder Healthcare Fund	none		J	T	"				
32	Sector Spdr Fincl Select	A	div	J	T	"				
33										
34	2) Bond Funds									
35	PIMCO Total Return Fund	A	div	J	T	"				
36										

1 Income/Gain Codes: A=\$1,000 or less; B=\$1,001-\$2,500; C=\$2,501-\$5,000; D=\$5,001-\$15,000; E=\$15,001-\$50,000; F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I=\$5,000,001-\$10,000,000; J=\$10,000,001-\$50,000,000; K=\$50,000,001-\$100,000,000; L=\$100,000,001-\$500,000,000; M=\$500,000,001-\$1,000,000,000; N=\$1,000,000,001-\$5,000,000,000; O=\$5,000,000,001-\$10,000,000,000; P=\$10,000,000,001-\$50,000,000,000; Q=\$50,000,000,001-\$100,000,000,000; R=\$100,000,000,001-\$500,000,000,000; S=\$500,000,000,001-\$1,000,000,000,000; T=\$1,000,000,000,001-\$5,000,000,000,000; U=\$5,000,000,000,001-\$10,000,000,000,000; V=\$10,000,000,000,001-\$50,000,000,000,000; W=\$50,000,000,000,001-\$100,000,000,000,000; X=\$100,000,000,000,001-\$500,000,000,000,000; Y=\$500,000,000,000,001-\$1,000,000,000,000,000; Z=\$1,000,000,000,000,001-\$5,000,000,000,000,000; AA=\$5,000,000,000,000,001-\$10,000,000,000,000,000; AB=\$10,000,000,000,000,001-\$50,000,000,000,000,000; AC=\$50,000,000,000,000,001-\$100,000,000,000,000,000; AD=\$100,000,000,000,000,001-\$500,000,000,000,000,000; AE=\$500,000,000,000,000,001-\$1,000,000,000,000,000,000; AF=\$1,000,000,000,000,000,001-\$5,000,000,000,000,000,000; AG=\$5,000,000,000,000,000,001-\$10,000,000,000,000,000,000; AH=\$10,000,000,000,000,000,001-\$50,000,000,000,000,000,000; AI=\$50,000,000,000,000,000,001-\$100,000,000,000,000,000,000; AJ=\$100,000,000,000,000,000,001-\$500,000,000,000,000,000,000; AK=\$500,000,000,000,000,000,001-\$1,000,000,000,000,000,000,000; AL=\$1,000,000,000,000,000,000,001-\$5,000,000,000,000,000,000,000; AM=\$5,000,000,000,000,000,000,001-\$10,000,000,000,000,000,000,000; AN=\$10,000,000,000,000,000,000,001-\$50,000,000,000,000,000,000,000; AO=\$50,000,000,000,000,000,000,001-\$100,000,000,000,000,000,000,000; AP=\$100,000,000,000,000,000,000,001-\$500,000,000,000,000,000,000,000; AQ=\$500,000,000,000,000,000,000,001-\$1,000,000,000,000,000,000,000,000; AR=\$1,000,000,000,000,000,000,000,001-\$5,000,000,000,000,000,000,000,000; AS=\$5,000,000,000,000,000,000,000,001-\$10,000,000,000,000,000,000,000,000; AT=\$10,000,000,000,000,000,000,000,001-\$50,000,000,000,000,000,000,000,000; AU=\$50,000,000,000,000,000,000,000,001-\$100,000,000,000,000,000,000,000,000; AV=\$100,000,000,000,000,000,000,000,001-\$500,000,000,000,000,000,000,000,000; AW=\$500,000,000,000,000,000,000,000,001-\$1,000,000,000,000,000,000,000,000,000; AX=\$1,000,000,000,000,000,000,000,000,001-\$5,000,000,000,000,000,000,000,000,000; AY=\$5,000

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Julia S. Gibbons

Date of Report

10/10/01

## VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Description of Assets (including trust assets)	B- Income during reporting period		C- Gross value at end of reporting period		D- Transactions during reporting period				E- If not exempt from disclosure			
	(1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or interest)	(1) Value Code2 (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy/sell, merger, redemption)	(2) Date Month/ Day	(3) Value Code2 (U-F)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)			
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)												
36 Janus High Yield Fund	A	div	J	T	EXEMPT							
37 Loomis Sayles Bond Fund	A	div	J	T	"							
38 Invesco Income High Yield Fund	A	div	sold in T entirety		"							
39												
40												
41 3) Schwab Money Market Fund	A	div	J	T	"							
42												
43												
44												
45												
46												
47												
48												
49												
50												
51												
52												
53												

1. Income/Gain Codes: (See Col. B1, D4)	A=\$1,000 or less F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I2=More than \$5,000,000	E=\$15,001-\$50,000
2. Value Codes: (See Col. C1, D3)	J=\$15,000 or less N=\$250,001-\$500,000 P3=\$25,000,001-\$50,000,000	K=\$15,001-\$50,000 O=\$500,001-\$1,000,000	L=\$50,001-\$100,000 P1=\$1,000,001-\$5,000,000 R4=More than \$50,000,000	M=\$100,001-\$250,000 P2=\$5,000,001-\$25,000,000	
3. Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Julia S. Gibbons

Date of Report

10/10/01

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

My husband no longer has an interest in Evans & Petree P.C. (after his departure from the firm, it merged with another firm and is now known as Stokes Martholomew Evans & Petree, P.C.). In December 2000 he received a fee for work done prior to November 1, 1996, when he left the firm (reported in Part III). This is the fee referred to in the 1999 report (Part VIII-1999 report) in which the fees were court-approved. The bulk of this fee was placed in the Federal Building Federal Credit Union account referred to in Part VII of the 2000 report for a short time. Investments of this fee were made in January 2001, as reported in Part VII of this report.

The 1999 loan to my husband from the Evans & Petree 401(k) plan, which is reported in Part VI of the report, was paid in full in January, 2001.

The Merrill Lynch money market fund listed in prior years is closed.

## IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app., § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Julia Smith GibbonsDate October 10, 2001

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App., § 104.)

## FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Suite 2301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks-varies-average amount	\$5,000.00	Notes payable to banks-secured	none
U.S. Government securities-add schedule	none	Notes payable to banks-unsecured	none
Listed securities-add schedule	none	Notes payable to relatives	none
Unlisted securities--add schedule	none	Notes payable to others	none
Accounts and notes receivable:		Accounts and bills due-normal monthly bills only	
Due from relatives and friends	none	Unpaid income tax	none
Due from others (see attached note)	\$20,000.00	Other unpaid income and interest	none
Doubtful	none	Real estate mortgages payable-add schedule	\$413,533.66
Real estate owned-add schedule-personal residence is only real estate-no schedule attached	\$530,000.00	Chattel mortgages and other liens payable	none
Real estate mortgages receivable	none	Other debts-itemize:	
Autos and other personal property-approx.	\$160,000.00	PLUS educational loans for daughter's education	\$60,296.80
Cash value-life insurance	\$24,566.99		
Other assets itemize:(see continuation on next page)			
Schwab One Account (money market) (9/30/01)	\$64,997.51		
Putnam Voyager Fund (9/20/01)	\$17,293.55		
Schwab Brokerage Account (see attached) (9/30/01)	\$92,194.04	Total liabilities	\$473,830.46
Evans & Petree 401(k) (see attached)	\$118,199.45	Net Worth	\$603,266.56
Total Assets	\$1,077,097.02	Total liabilities and net worth	\$1,077,097.02
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	none	Are any assets pledged? (Add schedule)	No
On leases or contracts	none	Are you defendant in any suits or legal actions?	No
Legal Claims	none	Have you ever taken bankruptcy?	No



Provision for Federal Income Tax			
Other special debt	none		

Note re our children's net worth: Our dependent children have a few hundred dollars in bank accounts and savings bonds with values of no more that \$5000-10,000 (possibly less). I will provide more detailed information if necessary.

OTHER ASSETS (continued)

Equi-vest IRA	\$ 19,848.58
Equi-vest IRA	\$ 19,892.16
State of Tennessee 401(k)	\$ 2,539.74
Escrow Account with mortgage holder	\$ 2,565.00

Note re accounts due from others:

I expect to receive a payment in excess of \$20,000.00 (exact amount unknown) arising from a claim against the United States for Old Age and Survivor Disability Insurance (OASDI) taxes improperly withheld from my pay. In Hatter v. United States, \_\_\_ U.S. \_\_\_, 121 S.Ct. 1782 (2001), the collection of OASDI taxes from Article III federal judges appointed prior to January 1, 1984, was held to violate the Compensation Clause of Article III of the United States Constitution.

My husband expects to receive an amount from his former law firm near the end of 2001. This will represent a payment for a fee earned while he was with the firm and in which he retained an interest after his departure. Most of the fee was paid in 2000, but the firm retained a portion of it to determine the firm fees in 2001 for administering the settlement of the case from which the fee was derived. While my husband expects that he will have some interest in this remaining portion, the amount is uncertain. For this reason, no amount has been included on the net worth statement.

## Evans &amp; Petree 401(k) breakdown

Morgan Keegan account	
Investment Company of America d/b/a The American Funds Group	\$47,516.43
Bedford Money Market Fund	\$45,456.86
Schwab Institutional Account	\$25,226.16

## Schwab Brokerage Account Breakdown

Cash and Money Market Funds	
Cash	\$ 60.49
Schwab Money Market Fund	3073.47
Bond Funds	
Janus High Yield Fund	9823.14
Loomis Sayles Bond CL-I	9855.96
Primco Total Return Fund Institutional Class	10850.47
Equity Funds	
Eaton Vance Worldwide	1901.23
Health Sciences Fund	
Oakmark Select Fund	5619.93
Red Oak Technology	4473.95
Select Portfolio	
Schwab 1000 FD-Select	4657.87
Scudder Health Care Fund	4197.07
Weitz Partners Value Fund	5195.84
White Oak Growth Stock Fund	9020.12
Other	
I Shares Tr DJ US Health Care	6053.00
US Healthcare Sectr Indx	
NASDAQ 100 Shares	5071.50
Unit Ser 1	
Sector SPDR Fincl Select	12340.00
Shares of Beneficial Int	

## Mortgages on residence

HSBC Mortgage (USA) Corp.	\$346,461.17
National Bank of Commerce	\$ 67,072.49
(second mortgage)	

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I cannot do pro bono work representing those who are unable to afford counsel. I have attempted to fulfill my moral responsibilities to care for the disadvantaged through participation in my church and its service efforts and through participation in service organizations like the Memphis Rotary Club and Rotary International. Within the profession, I have participated in bar association service efforts. As an officer and member of the Association for Women Attorneys, I was involved in its efforts to provide legal services to the disadvantaged. These included its project to provide counsel to women who needed domestic protective orders and its organization of the Community Legal Center to serve the working poor, although I could not be a direct provider of services to clients. In particular, the effort to create what ultimately became the Community Legal Center required much time, and I was a part of the organizational group or board for its predecessor organization. As a judge, I was involved in our court's creation of a Pro Bono Panel to provide representation to pro se civil litigants upon court appointment, our efforts to encourage lawyers to participate in the Panel, and our establishment of a fund, through increased attorney admission fees, to pay litigation expenses in Panel cases, thus facilitating the representation.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I have not belonged and do not currently belong to such organizations.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection committee in my jurisdiction. My experience in the selection process consisted of expressing my interest in the position to Tennessee's senators, being interviewed at the White House, filling out the required forms, and co-operating with the FBI investigation. It culminated in my nomination on October 9, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

All judges within the federal system face questions concerning their proper role as a judge and the proper role of the courts in relation to the other branches of government.

The correct course for a judge is to resolve only presently-existing disputes between the litigants in the case before her for decision. The judge should not search outside the bounds of a particular case for a problem to resolve or a not-yet-developed controversy to hear.

Trial judges of course have an obligation to follow applicable appellate precedent, whether or not certain decisions might be characterized as reflective of "judicial activism."

A key concept for the individual judge is remembering that enormous power should be used responsibly and in a way that promotes the perpetuation of our system of government and public confidence in the system. Our system contemplates a limited, but vital role for the courts. Judges must resolve disputes and enforce individual rights, yet stay within the bounds intended for them by the Constitution. They must recall that the rules apply to them, even though the independence of the positions makes it easy to stray from them.

1030

AFFIDAVIT

I, Julia Smith Gibbons, do swear that  
the information provided in this statement is, to the best of my  
knowledge, true and accurate.

October 10, 2001  
(DATE)

Julia Smith Gibbons  
(NAME)

Mark S. Doherty  
(NOTARY) 5-14-03

Senator EDWARDS. Did you want to make an opening statement today?

Judge GIBBONS. No, thank you. No, sir.

Senator EDWARDS. Let me start by asking just a few general questions.

I wonder if you would talk first, since you actually have a good deal of experience as a district court and trial judge, a little bit about what your experience has taught you about how parties should be treated, about the evaluation of the law, and I guess most importantly from the perspective of a Federal district judge how you believe as an appellate judge opinions and work done by lower court judges, district court judges, should be treated by the appellate courts.

Judge GIBBONS. Well, in terms of my service as a district judge, of course, I believe parties should always be treated courteously, fairly, and with—it is very important that the judge be dispassionate and not become—while it is important to show courtesy, it is also important to be dispassionate rather than emotional or overly involved in the emotions of the situation.

With respect to the law, it is very important for the judge to be a good student, to read the briefs, to listen to what the parties have to say, and to decide carefully and thoughtfully with full use of what intellectual capacity you have to bring to the occasion.

As an appellate judge, certainly I will try to approach that job with the same qualities I have displayed in my work on the district court. The appellate work is, of course, a bit different because you do not have the same degree of interaction with lawyers and litigants that you have on the district court.

I am also hopeful that there will be a little—there will be more opportunity to be reflective because, of course, in the district court, while we do try to keep the level of scholarship high, you are dealing with trials, writing opinions, many things at once. And I am hoping for a little bit more opportunity to reflect and think and craft the opinions very carefully.

Senator EDWARDS. Let me follow up on that, if I can, because as you well understand, there is a significant difference in the responsibilities of an appellate judge and a district judge. The appellate judge is responsible primarily for interpreting questions of law, as opposed to questions of fact, and mixed questions of fact and law.

I wonder if you could give us an example or two of situations where, as a Federal district court judge, you have dealt with what you considered complex questions of law and how you went about working your way through those difficult questions.

Judge GIBBONS. Are you interested in specific cases or are you—

Senator EDWARDS. Yes, yes.

Judge GIBBONS. Okay. I think that—

Senator EDWARDS. Not necessarily high-profile or controversial cases. I am more interested in cases that you thought presented a difficult challenge to you as a judge in interpreting the law.

Judge GIBBONS. Well, I will mention just two which I think give examples of my approach. One is a case that was included actually in my Senate questionnaire, and that is the *Coger* case, which was

a very, very—it was an age discrimination case, probably the most factually complex case with which I have ever dealt as a district judge.

I had to deal with many difficult issues, pre-trial issues. In fact, one of the issues I dealt with pre-trial is before the Court, the Supreme Court, this term, which is the availability of disparate impact theory in an age discrimination case.

We tried the case. Just to tell you why it was factually complex, the plaintiffs were——

Senator EDWARDS. This is the case that actually went to the United States Supreme Court?

Judge GIBBONS. Well, my case did not, but a case raising the same issue did.

Senator EDWARDS. Yes.

Judge GIBBONS. The case was factually complex due to the fact there were 17 plaintiffs in 11 different departments at the University of Memphis, many comparables. In any event, we tried the case. I did a very lengthy opinion at the close of the plaintiff's proof on the motion for partial findings. At that point, *Seminole Tribe* was decided, and I ended up dismissing the case after many years and many weeks of trial based on this intervening Supreme Court precedent.

The second case I will mention just briefly was a patent case which I tried in the fall of 2000, and that is not the everyday work of the district court, although we do have intellectual property cases. But it was a very complicated case. The quality of the lawyering was excellent. I was faced every day with issues that were new to me and I enjoyed very much trying to carefully and conscientiously work through those issues with the lawyers.

Senator EDWARDS. One of the issues, as I understand it, that reminded me, if I am correct, about this in the *Coger* case was an issue of federalism. Is that right? And sovereign immunity issues, I think, also were involved?

Judge GIBBONS. Yes, yes.

Senator EDWARDS. That is an area that some of us have concern about, and I know that you had dealt with those issues in that case. I think you also dealt with them in the *Daily* case, if I remember correctly from the information I have seen. Is that correct?

Judge GIBBONS. I did deal with them in the *Daily* case, and also in a case called *United States v. Sari* which was recently furnished to the committee.

Senator EDWARDS. That is a case that I am not personally familiar with. Tell me about that one.

Judge GIBBONS. It was a case, a criminal case, and the defendant was charged under the section of 18 U.S.C. 922(g) that deals with carrying a firearm when you are under a domestic protective order. And both that case and *Daily* frankly involved a fairly straightforward application of *Lopez* based on authorities from other courts.

Senator EDWARDS. One of the concerns that some of us—and there are different views about this; let me recognize that first. But one of the concerns that some of us have is that at least some have reported that this United States Supreme Court has struck down more congressional laws passed by the Congress, Federal laws



passed by the Congress, per year than any Supreme Court in our history. Some people have referred to this as the new federalism.

I guess the concern that some of us have is the impact that could have on areas like civil rights, which have, in the history of our country, played—the Federal laws have played a very important and significant role in.

Can you tell me what your thoughts are about that subject, what comments you have? I know that you will be limited in what you can say about it, but I would like to have whatever you feel like you can comment.

Judge GIBBONS. Well, as a judicial officer I would approach any question of reviewing a statute for constitutionality mindful of the presumption of constitutionality and with deference to the legislature. But, of course, as a lower court judge I am also obligated to follow the Supreme Court precedent and I will try to do that as faithfully as I can.

Senator EDWARDS. Sure. Well, let me give you an example. One of the laws that the Congress passed by large majorities in both Houses was the Violence Against Women Act, a big chunk of which the U.S. Supreme Court found to be unconstitutional as an invalid exercise of power. Again, it goes to sort of the *Brown v. Board of Education* and the whole stream of cases that depended on the Commerce Clause and the exercise of power by the Congress.

Can you tell me whether you have any ideas or thoughts about that, whether any of that troubles you?

Judge GIBBONS. My obligation is to follow the Supreme Court precedent and I will seek to do that.

Senator EDWARDS. Can you give me some examples of judges or Justices on the Supreme Court that you particularly respect or admire?

Judge GIBBONS. Well, I would certainly have to say that I admire Justice O'Connor. She was appointed to the Supreme Court not long after I became a State circuit judge, and then when I moved to the Federal court she was our circuit Justice. And her personal graciousness to the very small number of women who were serving as judges in the Sixth Circuit at that time was something I have always appreciated very much, and I also admire her approach to cases.

I also admire Chief Justice Rehnquist, whom I believe has provided excellent leadership to the judiciary and whom I have had the opportunity to observe when I was Chair of the Judicial Resources Committee in his presiding over the sessions of the Judicial Conference. And I was always extremely impressed with the way he handled those sessions and handled carrying out the work of the judiciary.

Senator EDWARDS. Can you give me some examples of cases that have been decided over the last 20 years, 2 decades, that you think, at least from your—they don't have to be big cases, but in terms of legal analysis and the facts involved in the case that you believe were decided correctly?

Judge GIBBONS. Oh, yes. I don't believe it is really my place to judge whether a Supreme Court precedent has been correctly or incorrectly decided. I believe it is my job as a district judge, and will

be my job as an appellate judge if I am fortunate enough to be confirmed, to follow the precedent.

Senator EDWARDS. Sure. But, of course, as you know, even as a district court judge you get confronted sometimes with cases where there is little or no precedent or where there is ambiguity in the existing law.

Can you just give me some insight into how you would approach those kinds of situations?

Judge GIBBONS. Situations where there is ambiguity in the—

Senator EDWARDS. Or no clear precedent one way or the other.

Judge GIBBONS. Well, I think that when there is ambiguity, one proceeds carefully, looks at what precedents might be available by analogy. Certainly, if you are interpreting a statute or the Constitution, you look first at the plain meaning. If you are in some other area, then you probably go first to any available precedents that might give you assistance in the analysis, even though they are not directly binding or applicable. Then you look very carefully at what the arguments of the parties are, their briefs, and you take a careful approach to making a decision about what should happen.

I think you should be open-minded when approaching a situation like that. I think judges owe it to the litigants to remain open-minded and to decide when it is time to decide.

Senator EDWARDS. Let me ask you one last thing. I notice you have given some speeches over the years to various professional organizations.

Judge GIBBONS. Yes.

Senator EDWARDS. Can you give me some notion about what you think about what is appropriate for a sitting judge to talk about in the public arena and where you think the lines are, the limits are on that speech?

Judge GIBBONS. I think you speak about things that relate to the administration of justice, things that you are permitted to speak about within the terms of the code of conduct that relates to judges.

Senator EDWARDS. Senator DeWine, did you have questions that you would like to ask the judge?

Senator DEWINE. I do, but you can proceed.

Senator EDWARDS. I will call on Senator DeWine now.

Senator DEWINE. Thank you.

Let me ask you, if you could, to comment on—is it *Coger v. Board* that you were talking about?

Judge GIBBONS. Right, *Coger v. Board of Regents*. The University of Memphis was also a defendant.

Senator DEWINE. The issues involved in that case are particularly important to me. I was involved when I was in the House of Representatives in the passage of the ADEA, and so I have more than a passing interest in that, as I am sure all Americans do.

My understanding is that the Federal courts have really struggled on this issue and that the district courts are split, I think, close to 50–50 on the issue. Ultimately, the Supreme Court, I believe, came to the same conclusion pretty much as you did. Is that correct?

Judge GIBBONS. Same result. I think probably they got there a bit differently.

Senator DEWINE. They ended up with the same—

Judge GIBBONS. Ended up in the same place.

Senator DEWINE. Well, obviously, there is a lot of struggling going on. I will be honest with you—and I can say this, you can't—I disagree with the Supreme Court on that case. You are not allowed to say that. I understand that, but I happen to disagree with it. But I think it is clear that there was a very tough legal issue that you had to wrestle with.

Let me get back to a question that the chairman asked you, and it goes back a little bit to why you would want to leave the district court, which many people think is the greatest job in the world, to go to the appellate court.

What bothered you, if anything—I suspect there had to be things over your long career that have bothered you about the Sixth Circuit. In other words, without criticizing them, maybe a better way of saying it so you can feel comfortable and answer it is what would you like to do when you are there and what will be your mind set and your approach? What have you learned in your experiences as a trial judge?

I think there are advantages and disadvantages of being on the trial bench, but one advantage is you have been there, you have seen it, you have been in the arena. So when you go to the appellate court, you can judge it by what you have already seen.

Judge GIBBONS. Well, I have absolutely no criticism to make of the Sixth Circuit.

Senator DEWINE. I didn't think you would.

Judge GIBBONS. I know all those judges well. I have a good personal relationship with each of them and——

Senator DEWINE. What have you learned, though?

Judge GIBBONS. But I do have something to say in response to your question other than a general affirmation of that. I have obviously a lot of years of experience as a district judge. Presently, there is only one active member of the Sixth Circuit Court of Appeals who has experience as a district judge, and that was rather brief experience.

I think district judges can bring a great deal to appellate courts. You tend to develop as a district judge a certain precision and focus. You focus on the particular case before you. You learn to be record-driven, so you pay close attention to what is in the record and what the precise record is before the trial judge. I think that is a very useful perspective for an appellate judge to have as well, and I hope I can make a contribution in that area if I am confirmed.

Senator DEWINE. Well, that is an interesting statistic that you have given us. I guess what you are saying is that you need a variety of people on the appellate bench, which certainly makes sense.

Judge GIBBONS. Absolutely. I would not say that every member of that court should be a former trial judge, but you surely need some of them.

Senator DEWINE. Tell me a little bit more, if you could, about the *Daily* case.

Judge GIBBONS. Well, the *Daily* was just really a pretty—it is a case brought under the Child Support Recovery Act, which is the statute that makes it—or at least the particular clause I was dealing with was it is a Federal offense to travel in interstate com-

merce for the purpose of evading child support payments. I am not certain I am quoting exactly what the statute says, but I am pretty close.

And then there is a period for more than a year that the payments have to have remained unpaid and the amount has to be over \$5,000. That was a statute that I said was constitutional, that Congress validly passed that statute under the Commerce Clause.

Senator DEWINE. Under the Commerce Clause?

Judge GIBBONS. Right, and it was a pretty straightforward thing. It was post-*Lopez*, but it was a pretty straightforward application. Other courts have agreed with that. And, of course, those jurisdictional elements that are set forth in the statute make it an easier question.

Senator DEWINE. Thank you, Mr. Chairman.

Senator EDWARDS. Thank you, Senator, very much.

I just have one last question, Judge. It is obvious from both your long record and also from just seeing you here today that you are a person who tends to treat everyone around you with dignity and respect, which is something I have a great deal of respect for.

In the court which you have been nominated to, as I know you are aware, there has been some acrimony between the members of that court, and some fairly deeply division on some important issues. I just wonder what kind of approach you would bring to those kinds of differences and what you think the role of judges should be in trying to avoid those kinds of sort of personal, acrimonious fights.

Judge GIBBONS. Well, I bring to the court, if I am confirmed, obviously that prior relationship with all the members of the court, which I would hope to keep a cordial and good one. It is very, very important in the course of deciding cases that we not make personal comments, or that we not—if we are disagreeing, that we do so in a manner that is civil and restrained and respectful of each other's points of view. And I would hope to bring that sort of style to the court, and I would hope that I would know when I should not speak as well as when I should.

Senator EDWARDS. I don't have much question that you will bring that quality to the court. Thank you, Judge Gibbons, very much.

Senator DEWINE. Judge, thank you.

Judge GIBBONS. Thank you all very much.

Senator EDWARDS. And you are welcome to say; you are also welcome to leave.

Judge GIBBONS. I will stay. Thank you very much.

Senator EDWARDS. During the judge's testimony, Congressmen Hobson, Ford, and Sandlin have arrived. I would invite them to come forward now.

Welcome. We are happy to have all four of you here. Congressman Hall, we will begin with you. We would love to hear from you, and welcome.

**PRESENTATION OF LEONARD E. DAVIS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS BY HON. RALPH M. HALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative HALL. Thank you very much, and I am honored to be here on behalf of Judge Leonard Davis, of my district. He is currently serving as Chief Justice of the Twelfth Court of Appeals of the State of Texas, and I know you have all this information, so I am just going to scan it.

He enjoys strong bipartisan support. He has had no opposition in his election of November 2000 or in his reelection, and that is the way to run. We all know that. I think he ought to write a book about that because I always have opposition and they say, are you going to work hard? And I say there are just two ways to run, and that is unopposed or scared, and we usually run scared down there because we have a lot of opposition.

He has served in the judiciary as a civil trial lawyer. He is a fine man, he is a good citizen, he is a super judge, and he is a great family man. I think growing up Fort Worth, Texas, he came from humble parents, good parents, hard-working parents. For over 40 years, his dad was a lineman for the electric utility company. His mother worked part-time.

He attended high school, and although he worked throughout college, he obtained a bachelor's degree in mathematics in four years and went to work in 1970 as a computer programmer and systems analyst. He studied at Texas Christian University and entered the Baylor Law School and graduated cum laude from Baylor in November 1976.

Judge Davis currently serves on a number of boards and the Council of Chief Justices of the State of Texas. He is a member of the Texas Center for Legal Ethics and Professionalism. He has served as a member of the three-member bar admissions commission. He has served and paid his dues, and he is highly regarded, highly respected.

Judge Davis is a good man. I am a Democrat who recommends this Republican to this committee, and I thank you for the time. Senator EDWARDS. Thank you very much, Congressman Hall.

Congressman Hobson, welcome. Nice to see you.

**PRESENTATION OF THOMAS M. ROSE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO, BY HON. DAVE HOBSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Representative HOBSON. Mr. Chairman, it is a pleasure to be here today and a privilege for me to testify on behalf of my friend, Tom Rose, who has been a steadfast champion of the judiciary system in Greene County.

Judge Rose has a long and distinguished career, which includes his current position as judge in the Common Pleas Court which he has held since 1991. Judge Rose addresses about 400 civil and 400 felony cases annually.

Prior to becoming a judge, Tom worked for two years as a juvenile court referee with delinquent, neglected, and abused children. He also was an assistant prosecutor, serving as counsel in a variety

of local elected official and governmental organizations, and prosecuting criminal cases.

While serving as an assistant prosecutor, he maintained a private practice, working in the areas of civil litigation, business law, and real estate transactions. As an attorney, in addition to prosecuting criminal matters, Tom litigated personal injury lawsuits, contract disputes, will contests, adverse possession cases, appeals to administrative agencies, and all types of domestic relations matters. Judge Rose is admitted to practice before the Ohio courts and all levels of the Federal court system.

Judge Rose has also been a community leader. He is a current board member of the Xenia Rotary, and I can tell you he attends there because I have also made it up there. He is a member of three local chambers of commerce. Judge Rose has also served his community by providing free legal services to a variety of less fortunate individuals.

Many organizations, including the Greene County Victim Witness Program, the Greene County Alcohol, Drug Addiction, and Mental Health Services Board, the Xenia Rotary, and the Yellow Springs Masonic Lodge, have formally recognized and honored Judge Rose for his community service.

A native of Lowellville, Ohio, Judge Rose has lived in Greene County, Ohio, for the past 29 years. He received a bachelor of science education degree from Ohio University in 1970 and a juris doctorate from the University of Cincinnati College of Law in 1973. Those of us who graduated from Ohio State don't take umbrage at that, nor those who went to Ohio Northern, like Senator DeWine. After completing the Ohio University's Army reserve officers training program, Captain Rose served for eight years in the U.S. Army Reserve.

As Ohio's 7th District Representative to the Congress of the United States, I want to take this opportunity to publicly recognize the judge for his many contributions to the judicial institutions of Greene County and recommend him without reservation to the Federal bench for the Southern District of Ohio.

Senator EDWARDS. Thank you very much, Congressman Hobson.

My friend, Congressman Ford, we are honored to have you here, and I believe we will hear from you next.

**PRESENTATION OF JULIA SMITH GIBBONS, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT, AND SAMUEL H. MAYS, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE, BY HON. HAROLD E. FORD, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE**

Representative FORD. Thank you, Chairman Edwards. It is always a pleasure to be around you and be with the committee. Thank you and this committee for moving as you are moving on behalf of the Nation, and in particular with these nominees today.

I am delighted to be here with my colleagues, and in particular to be here with two outstanding—one jurist and one soon-to-be jurist, we hope, in Judge Gibbons, whom you heard just moments ago, and Samuel Hardy Mays, whom we know as just "Hardy" back at home.

I am a Democrat. This woman and man are Republicans, but they represent, I believe, the very best in our legal system in many ways as they both try to apply what is in the best interests of not a party, but what is in the best interests of our legal principles and what our legal system calls for.

I understand my colleagues, Senator Thompson and Senator Frist, have already walked through extensively their resumes and their histories and their backgrounds. I come just to testify to the type of people they are in our community.

Judge Gibbons' husband is here, and he is our district attorney back home is also a friend and someone who firmly believes, as his wife does, in a fair administration of justice. I know one thing that was probably not cited is that Judge Gibbons was the valedictorian in her high school, in Giles County, if I am not mistaken, some years ago. So she has always been a leader in the classroom. Whether it was at the University of Virginia or whether it was as legal adviser to our former governor, she is one who stands tall in our community.

Hardy Mays went to the wrong law school, but he went to a good one at Yale, Senator Edwards. We appreciate the contributions that he has made as a lawyer in private practice and as a managing partner in one of our largest firms, Baker Donelson—a former colleague of many in this Senate and many in Washington, Senator Howard Baker, and Louie Donelson back in Tennessee, who is perceived as one of the great leaders in the Republican Party back in our State, and one of the great political leaders and great legal minds as well.

This Senate would do the Nation good by moving expeditiously to ensure that Judge Gibbons finds a spot on the Sixth Circuit and that soon-to-be-Judge Mays finds a spot on the Western District Court of Tennessee.

With that, Senator, I thank you, and a special thanks to Senator Leahy and Senator Hatch. I know they are not here, but I hope that the two of them can work through whatever differences there may be to ensure that we are able to move as quickly as we can on these nominations.

Senator Edwards, it was good to see you in Florida, and I hope to see you sometime again soon. Thank you.

[The prepared statement of Mr. Ford follows:]

## PREPARED STATEMENT OF REPRESENTATIVE HAROLD FORD, JR.

Senator Edwards I'd like to express my appreciation to you, the Committee and to Chairman Leahy and Senator Hatch for the opportunity to testify on behalf of Judge Julia Gibbons and Hardy Mays.

First, I'd like to commend the committee for conducting a hearing on these two nominees. I'm a Democrat and they are Republicans, but I am not testifying today as a partisan. I'm here today because both Judge Gibbons and Mr. Mays are my constituents and they are well respected legal professionals and public servants who have served our state with distinction. And I believe that—if they are confirmed by this committee and the full Senate—they would serve honorably in their respective positions.

As you know, Judge Gibbons has been nominated to serve on the U.S. Court of Appeals for the Sixth Circuit. As a law clerk on the Sixth Circuit, in private practice, as a state judge, and a member of the U.S. District Court for Western Tennessee, Judge Gibbons has acquired the experience and possesses the temperament that will make her an asset to the Sixth Circuit. She has extensive experience as a trial judge and lawyer, both of which are important qualifications for a member of the appellate bench.

Judge Gibbons has served with distinction as a U.S. District Judge for the Western District of Tennessee since 1983 and as the court's Chief Judge from 1994 to 2000. In that capacity, she earned a reputation of applying the law consistent with our Nation's commitment to equal protection. Her appointments to serve by designation on the Sixth Circuit and the Judicial Panel on Multi-district Litigation demonstrate the high level of confidence she enjoys from her colleagues on the bench. She possesses excellent academic credentials and has demonstrated a strong civic commitment through her involvement in many organizations in the Memphis community.

Hardy Mays, who has been nominated to serve on the U.S. District Court for Western Tennessee, has worked as a partner with Baker, Donelson, Bearman & Caldwell. In that capacity, Mr. Mays worked to build the firm with its partners former Tennessee Senator Howard Baker and Lewis Donelson into one of our state's most respected law firms. As a lawyer, he has demonstrated that he possesses the professional competence the breadth of experience necessary to serve on the federal bench.

Mr. Mays was also a dedicated public servant, serving Governor Don Sundquist in a number of high level jobs. He gained valuable experience advising the Governor on a wide range of legal matters including judicial selections, clemency and legislation. From an academic standpoint, Mr. Mays has impeccable credentials and an outstanding knowledge of the law. He received his law degree from Yale Law School and served as an Editor of the Yale Law Journal. Finally, Mr. Mays is a person of integrity and strong moral character.

Once again, thank you for the opportunity to appear today and considering these two well qualified judicial nominees.

Senator EDWARDS. Thank you, Congressman Ford.

Congressman Sandlin, it is always great to see you again. Welcome. We are happy to have you here.

**PRESENTATION OF LEONARD E. DAVIS, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS, BY HON. MAX SANDLIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Representative SANDLIN. Thank you, Senator. I appreciate the opportunity to be here. I have very little to add to what Congressman Hall said. I thought we would be on the floor whipping today and we finished up early.

I am here also to lend my support to Judge Leonard Davis for his appointment. Our educations overlap somewhat at Baylor University, and he has friends with him today that he went to school with and friends from our community showing the support of the community and the respect that Texans, and East Texans in particular have for Judge Davis.



I have been particularly impressed with the fact that I have been contacted by many people from East Texas, both from the plaintiff's bar and the defense bar, in support of Judge Davis. Certainly, we all have differences of opinion. As we see here today and has been mentioned by many of my colleagues today, many of us are Democrats, but when we are talking about judicial qualifications, we are talking about intelligence, hard work, preparation, respect in the community, seriousness. I think Judge Davis expresses all of those in his demeanor and in his decisions in the courtroom and the respect that he has among the attorneys in Texas. So I know him to be of good character.

Prior to taking the bench, he was in one of the most respected law firms in East Texas. He is experienced in the courtroom as an attorney and as a jurist, and I think that he would do a good job and work hard and would be someone that the Senate could be proud of nominating.

So I am here in support of Judge Davis and to second what my good friend, Congressman Ralph Hall, has indicated to you today.

Senator EDWARDS. Thank you very much, Congressman Sandlin. Thanks to all the Congressmen for taking time out of, I know, a very busy day to come over here. We are honored to have you here.

Representative SANDLIN. Thank you. We appreciate it.

Senator EDWARDS. If we could have come forward now Judge Davis, Judge Godbey, Mr. Hanen, Mr. Mays and Judge Rose, and if you would remain standing, please, when you come forward.

If you would each raise your right hand, please, do you swear that the testimony you are about to give the committee will be the truth, the whole truth and nothing but the truth, so help you God?

Judge DAVIS. I do.

Judge GODBEY. I do.

Mr. HANEN. I do.

Mr. MAYS. I do.

Judge ROSE. I do.

Senator EDWARDS. Please be seated.

To begin with, if you would each introduce yourselves, and if you have friends or members of your family, we would love to have them introduced, also.

Mr. Davis, why don't we start with you?

**STATEMENT OF LEONARD E. DAVIS, NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF TEXAS**

Judge DAVIS. Thank you, Mr. Chairman. I am pleased to have with me today my wife of 32 years, Dana—if you would stand, Dana—and my two friends, Gaylord Huey and Whit Ryder, from East Texas. I could not have with me today my 83-year-old mother, Virginia, who lives in Irving, Texas, or my five children—Bo, Stafford, Sissy, Pooh, and Hawk—all of whom are busy in college and are near finals. But thank you, Mr. Chairman, for the opportunity to be here today.

[The biographical information of Judge Davis follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Leonard Ellsworth Davis
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge  
Eastern District of Texas
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Office: The Twelfth Court of Appeals  
1517 West Front Street, Suite 354  
Tyler, Texas 75702  
  
Telephone: 903-593-8471
4. **Birthplace:** State date and place of birth.  
  
January 15, 1948  
Fort Worth, Texas
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
I have been married for 32 years to Dana Lucy Helm Davis. She is the Chief Operating Officer of our household and five children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
Baylor University School of Law, 1974-76  
Doctor of Jurisprudence with Honors  
Graduated First in Class  
Overall grade point average: 2.9 out of 3.0

Texas Christian University, 1971-74  
 Masters of Management Sciences  
 Overall grade point average: 3.7 out of 4.0

University Of Texas at Arlington, 1967-70  
 B.A. Major - Mathematics; Minor - English  
 Overall grade point average: 2.0 out of 3.0

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

2000 - present      Chief Justice  
                          The Twelfth Court of Appeals  
                          1517 West Front Street, Suite 354  
                          Tyler, Texas 75702

1977 - 2000      Potter, Minton, Roberts, Davis & Jones, P.C.  
                          Shareholder  
                          P. O. Box 359  
                          Tyler, Texas 75710

1970 - 1974      Texas Electric Service Company  
                          Customer Service Systems Manager  
                          115 West 7<sup>th</sup> Street  
                          Fort Worth, Texas 76102

I received payment for my services at all of these places of employment.

Additionally, I have served without compensation on the Boards of the following non-profit organizations:

Smith County Bar Association, 2001.  
 State Judicial Districts Board, 1989 - 1991.  
 Baylor Law Review Ex-Editors Association, 1988 - 1989.  
 Baylor Law Alumni Association.  
 State Ethics Advisory Commission, 1983 - 1988.  
 University of Texas at Tyler, Educational Foundation, 1993 - Present.  
 University of Texas Health Center at Tyler, Development Board, 1994 - Present.  
 All Saints Episcopal School, 1986 - 1989; 1992 - 1996.

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

Texas Army National Guard  
Honorable Discharge 1973  
Specialist 4<sup>th</sup> Class  
460-76-0488

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Academic Honors:

Graduated first in a class of 122 with an overall grade point average of 2.9/3.0.  
Editor in Chief and Executive Editor, Baylor Law Review, 1976.  
Member, State Championship Moot Court Team, 1976.  
Member, Interscholastic State and National Moot Court Teams, 1975-76.  
Member, National Interscholastic Mock Trial Team, 1976.  
Member, State Interscholastic Mock Trial Team 1975-76.  
Member, Order of Barristers 1975-76.  
Member, Harvey M. Richey Moot Court Society 1975-76.  
Member, Harris Honor Society 1974-76.  
Honor Roles: Fall 1974, Winter 1975, Spring 1975, Summer 1975, Winter 1976, Spring 1976 and Summer 1976.  
Recipient, American Jurisprudence Award for Excellence in Contracts 1975.  
Recipient, American Jurisprudence Award for Excellence in Federal Courts 1976.  
F. R. Jackson Memorial Scholarship 1975-76.  
Participant, Juvenile Ad Litem Program.  
Member, Student Bar Association.  
Member, Phi Delta Phi Legal Fraternity.

Professional Honors:

Board of Directors, Smith County Bar Association, 2001.  
Member, Bar Admissions Committee, United States District Court  
Court, Eastern District of Texas, 1986 - 1996.  
Member, Council of Chief Justices, State of Texas, 2000.  
Member, Texas Center for Legal Ethics and Professionalism, 2001.  
Member Texas Judicial Council Committee on Equalization of Appellate Court  
Funding, 2001.  
Member, State Judicial Districts Board, 1989 - 1991.  
Chairman, Legal Publications Committee, State Bar of Texas, 1978 - 1982.

President, Baylor Law Review Ex-Editors Association, 1988 - 1989.  
 Member, Baylor Law Alumni Association.  
 AV Rating, Martindale Hubbell since 1982.  
 Fellow, Texas Bar Foundation, 1987 - Present.  
 Liaison Counsel, Eastern District of Texas, Indigent Capital  
 Murder Defendant Program, 1988.  
 Who's Who in American Law 1989.  
 Teacher and Coach, All Saints Episcopal High School's Mock Trial Team, 1996.

Other Honors and Activities:

Member, State Judicial Districts Board, 1988-92.  
 Member, State Ethics Advisory Commission, 1983 - 1988.  
 Member, University of Texas at Tyler, Educational Foundation, 1993 - Present.  
 Member, University of Texas Health Center at Tyler, Development Board, 1994 -  
 Present.  
 President, Board of Trustees, All Saints Episcopal School, 1986 - 1989.  
 Member, Board of Trustees, All Saints Episcopal School, 1986 - 1989; 1992 -  
 1996.  
 Recipient, All Saints' Flame of Excellence Award and Founders Day Honoree,  
 1998.  
 Honoree, All Saints' Davis MultiSports Center Dedication, 1998.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, American Bar Association, 1977 - Present.  
 Member, State Bar of Texas, 1977 - Present.  
 Member, Smith County Bar Association, 1976 - Present.  
 Board of Directors, Smith County Bar Association, 2001.  
 Member, Bar Admissions Committee, United States District Court  
 Court, Eastern District of Texas, 1986 - 1996.  
 Member, Council of Chief Justices, State of Texas, 2000.  
 Member, Texas Center for Legal Ethics and Professionalism, 2001.  
 Member Texas Judicial Council Committee on Equalization of Appellate Court Funding,  
 2001.  
 Member, State Judicial Districts Board, 1989 - 1991.  
 Chairman, Legal Publications Committee, State Bar of Texas, 1978 - 1982.  
 President, Baylor Law Review Ex-Editors Association, 1988 - 1989.  
 Member, Baylor Law Alumni Association.  
 Fellow, Texas Bar Foundation, 1987 - Present.  
 Liaison Counsel, Eastern District of Texas, Indigent Capital  
 Murder Defendant Program, 1988.

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All courts of the State of Texas, 1977.  
 United States Supreme Court, 1980.  
 United States Court of Appeals for the  
 Fifth Circuit, 1977.  
 United States District Courts:  
 Eastern District of Texas, 1977  
 Northern and Southern Districts of Texas, 1978.

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Member, State Ethics Advisory Commission.  
 Member, University of Texas at Tyler Educational Foundation.  
 Member, University of Texas Health Center at Tyler Development Board.  
 Member and President, All Saints Episcopal School Board of Trustees.  
 Member, Historic Tyler, Inc.  
 Member, East Texas Symphony League.  
 Member, Tyler Museum of Art.  
 Member, Youth With A Mission Advisory Board.  
 Member, Tyler Chamber of Commerce.  
 Member, Tyler YMCA.  
 Member, Board of Directors, American Heart Association.  
 Member, Baylor Law Alumni Association.  
 Member, Executive Board, Tyler Drug Free Business Initiative.  
 Member, Tyler Together Race relations Task Force.

No, none of these have discriminated by formal or practical membership requirements.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form

over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

"Subsidence: Settling Down Within the Laws of Accretion, Reliction, Erosion and Submergence," 28 Baylor Law Review 319.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent, April 2001.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;

Note: Summaries are from Westlaw head notes.

1. *Samedan Oil Corporation v. Intrastate Gas Gathering, Inc.*, No. 12-99-00242-CV, 2001 WL 1153443 (Tex. App. – Tyler 2001, n. pet. h.). Natural gas processing plant brought action against well operator to recover for fraud and tortious interference with contract in connection with settlement agreement and decision to disconnect pipeline. Operator counterclaimed for breach of contract. The 349th Judicial District Court, Houston County, directed verdicts against both parties. On appeal, the Court of Appeals reversed and remanded in unpublished opinion. On remand, the District Court entered judgment on jury verdict for plant. Operator appealed. The Court of Appeals, Davis, C.J., held that: (1) evidence supported conclusion that the operator procured the pipeline by fraud in connection with the settlement agreement; (2) evidence supported conclusion that operator tortiously interfered with plant's contracts with third-party wells by disconnecting the pipeline; (3) evidence supported the out-of-pocket damages for the operator's fraudulent procurement of the pipeline; (4) question asking jury to determine the damages caused by tortious

interference with contract was fatally defective; (5) objections to jury charge could direct court to timely written objections to proposed instructions; and (6) failure to instruct the jury to reduce damages to present value was reversible error. Affirmed in part, reversed in part, and remanded.

2. **Hill v. State**, No. 12-00-00172-CR, 2001 WL 493275 (Tex. App. – Tyler 2001, pet. filed). Sixteen-year-old defendant was certified to stand trial as an adult and pled guilty in the District Court, Smith County, to capital murder. Defendant appealed. The Court of Appeals, Davis, J., held that: (1) defendant's transportation to police station for questioning was done without unnecessary delay; (2) defendant failed to preserve for appellate review his claim that his confession should have been suppressed because he was taken to the police station, rather than a designated juvenile processing office; (3) police department failed to promptly notify defendant's mother that he was in custody for capital murder; and (4) defendant's invocation of his right to remain silent was not honored by magistrate. Reversed and remanded.
3. **Gessmann v. Stephens**, 51 S.W.3d 329 (Tex. App. – Tyler 2001, no pet.). After tree-cutting machine used in logging industry was inadvertently activated due to an allegedly defective switch on the control handle, resulting in the death of an individual, a strict products liability lawsuit was brought against the German company that manufactured the plastic casing for the control handle, as well as several other defendants. The German company filed a special appearance. The Second Judicial District Court, Cherokee County, John Robert Adamson, J., denied the special appearance, and company appealed. The Tyler Court of Appeals, Davis, J., held that trial court lacked either specific or general jurisdiction over German company, a nonresident defendant. Reversed and remanded with instructions.
4. **Carolyn Freeman, Maurice Epley and Ann Freeman v. Samedan Oil Corporation and Sklar & Phillips Oil Company**, No. 12-99-00334-CV, 2001 WL 33279603 (Tex. App. – Tyler 2001, n. pet. h.). Lessors brought declaratory judgment action seeking termination of oil and gas lease against oil company lessee and its predecessor in title. The District Court, Harris County, entered final declaratory judgment that lease had not terminated and awarded damages. Lessors appealed. The Court of Appeals, Davis, C.J., held that: (1) lease terminated 60 days after oil and gas production ceased and landowners' refused to sign waterflood unit agreement; (2) once lease terminated by its own terms, lease could not be revived; and (3) landowners' claims against oil company lessee and predecessor in interest could be decided without joinder of all other mineral interest owners in unitized lease. Reversed and remanded.



5. ***General Electric Capital Auto Financial Leasing Services, Inc. v. Stephen R. Stanfield, et al***, No. 12-00-00367-CV, 2001 WL 800058 (Tex. App. – Tyler July 11, 2001, pet. filed). Automobile lessees sued assignee of lessor, alleging misrepresentations were made in conjunction with signing of leases. The 4th Judicial District Court, Rusk County, entered default judgment against assignee and denied assignee's motion for a new trial. Assignee appealed. The Court of Appeals, Davis, J., held that: (1) letter from trial judge stating that default judgment was granted was not a final judgment; (2) assignee's affidavit in support of its motion for new trial was sufficient to support its uncontradicted contentions that its failure to appear was the result of a mistake; and (3) assignee was entitled to a new trial. Reversed and remanded.
6. ***State v. Simpson***, 51 S.W.3d 633 (Tex. App. – Tyler 2000, pet. filed). State appealed from an order of the Third Judicial District Court, Anderson County, Bascom W. Bentley, III, J., suppressing juvenile's written statement confessing to capital murder. The Court of Appeals, Davis, C.J., held that taint of state's failure to promptly notify juvenile's parents had not dissipated by time juvenile confessed. Affirmed.
7. ***Leo Johnson, Individually and as Representative of The Estate of Betty Johnson, et al v. Nacogdoches County Hospital District***, No. 12-00-00348-CV, 2001 WL 840264 (Tex. App. – Tyler July 25, 2001 no pet.). Surviving spouse of patient, on behalf of himself and children, brought wrongful death and survival action against county hospital. The 145th Judicial District Court, Nacogdoches County, entered summary judgment for hospital. Spouse appealed. The Court of Appeals, Davis, C.J., held that: (1) notice provision of Texas Tort Claims Act (TTCA) was merely state procedural law, and thus applied to action, and (2) genuine issue of material fact as to whether hospital director received actual notice of claim within TTCA's six-month notice period precluded summary judgment. Reversed and remanded.
8. ***McConnell v. State***, 34 S.W.3d 27 (Tex. App. – Tyler 2000, no pet.). After the 114th Judicial District Court, Smith County, Harold Clapp, J., entered order revoking defendant's community supervision, which had been imposed upon plea to burglary, defendant appealed. The Court of Appeals, Davis, C.J., held that: (1) trial court had jurisdiction and authority to revoke defendant's community supervision; (2) Court would construe issue of whether trial court erred in failing to admonish defendant that he had right to appear before grand jury as challenge to jurisdiction of trial court; and (3) admonishment of defendant prior to acceptance of guilty plea was sufficient. Affirmed.

9. *In Re Link*, 45 S.W.3d 149 (Tex. App.- Tyler 2000, orig. proceeding). Member of county sheriff's department filed petition for writ of mandamus, challenging county commissioners court's refusal to call election pursuant to petition to increase salaries of sheriff's department. The Court of Appeals, Davis, C.J., held that commissioners court could not simply reject petition without taking some action in accordance with minimum salary proposal statute, warranting mandamus relief. Petition granted; writ issued.
10. *Smith v. State*, No. 12-99-00066-CR, 2000 WL 1470147 (Tex. App. – Tyler 2000, pet. granted). Defendant was convicted following jury trial in the 241st Judicial District Court, Smith County, of aggravated sexual assault of a child. Defendant appealed. The Court of Appeals, Davis, C.J., held that: (1) defendant's right of confrontation was not violated by admission of two videotaped interviews of victim by Child Protective Services investigator, the second of which included interrogatories propounded by defense counsel; (2) pediatrician's testimony relating grandmother's account of what victim had told her concerning alleged abuse was not admissible under hearsay exception for statements made for treatment purposes; and (3) defendant waived objection to that testimony. Affirmed.

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

On November 28, 2001 the Texas Court of Criminal Appeals reversed *Smith v. State*, No. 12-99-00066-CR, 2000 WL 1470147 (Tex. App. – Tyler 2000 ) and remanded it to the Court of Appeals for it to reconsider Appellant's claims pursuant to *Idaho v. Wright*, 497 U.S. 805 (1990). See *Smith v. State*, No. 1856-00, 2001 WL 1504568 (Tex. Crim. App. 2001).

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

The following cases involved constitutional issues and have already been summarized in response to Question 16(a) above.

1. *Hill v. State*, No. 12-00-00172-CR, 2001 WL 493275 (Tex. App. – Tyler 2001, pet. filed).
2. *Gessmann v. Stephens*, 51 S.W.3d 329 (Tex. App. – Tyler 2001, no pet.).
3. *State v. Simpson*, 51 S.W.3d 633 (Tex. App. – Tyler 2000, pet. filed).
4. *McConnell v. State*, 34 S.W.3d 27 (Tex. App. – Tyler 2000, no pet.).

5. *Smith v. State*, No. 12-99-00066-CR, 2000 WL 1470147 (Tex. App. – Tyler 2000, pet. granted).

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

State Ethics Advisory Commission, 1983 - 1988, appointed by Governor Mark White.

State Judicial Districts Board, 1988 - 1992, appointed by Governor William P. Clements.

General Counsel, Republican Party of Texas, 1983 - 1988, appointed by State Chairman George Strake.

Candidate, State Senate District 2, unsuccessful 1982.

Nominee, United States District Court, nominated in May 1992 by President George Bush, but nomination was mooted with President Bush's defeat in November 1992.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I supported and worked for President George W. Bush in his various gubernatorial and presidential campaigns, serving on his Smith County Steering Committee in 1994 and 1998, the Statewide Finance Committee in 1997, and in 1999-2000 on his East Texas Finance Committee.

I also supported former President George Bush in his 1988 and 1992 campaigns, serving on his Smith County Steering Committee in 1988 and 1992, and as Regional East Texas Chairman of Lawyers for Bush in 1988.

I also supported former President Ronald Reagan in 1980 and 1984.

I have been involved in general fund-raising activities for many other candidates including U.S. Congressman Ralph Hall, U. S. Senators Phil Gramm and Kay

Bailey Hutchison, Governor William P. Clements, Governor Rick Perry, Attorney General John Cornyn, Chief Justice Tom Phillips, Chief Justice Tom Ramey, and other local candidates.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;  
  
No, I have not.
  - (2) whether you practiced alone, and if so, the addresses and dates;  
  
No, I never practiced alone.
  - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.  
  
1977 - 2000    Potter-Minton, P.C.  
                         P.O. Box 359  
                         Tyler, Texas 75710  
                         Shareholder
- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

After graduating from Baylor Law School in 1976, I joined the Tyler law firm of Potter, Guinn, Minton and Roberts ("The Potter Firm"), where I practiced as a civil trial attorney for the next 23 years. The Potter Firm was founded in 1898 and has always represented a variety of individual, business, banking, oil and gas, and corporate clients throughout East Texas. I became a partner in 1979, and was managing partner from 1983 until 1990.

During my 23 years as a trial attorney, I handled hundreds of cases involving all types of major civil litigation including commercial and business litigation, estates, oil and gas, products liability, and negligence. In the early years of my practice, I maintained a heavy insurance defense docket trying many different types of cases in both state and federal court. These included worker's compensation, FELA, Jones

Act, section 1983 civil rights cases, auto accidents, DTPA, products liability, and medical, legal and architect malpractice cases.

Early in my career, I also tried several notable court appointed criminal cases on behalf of indigent clients. These included murder, aggravated assault, interstate transportation of stolen cattle, and tax protest cases. These were in both state and federal court. In one of these cases, *U.S. v. Hines*, 563 F.2d 737 (5<sup>th</sup> Cir. 1977), I had the dubious distinction of being the first attorney to ever reverse the Honorable William Wayne Justice in a criminal case. To show his appreciation, he then appointed me to represent the defendant in another case, which I tried resulting in a not guilty verdict.

Around 1982 I began to refocus my practice handling a smaller number of selective cases of a much greater magnitude. My practice eventually came to focus almost exclusively in significant commercial, oil and gas, estate, product liability and negligence cases. I have handled numerous complex oil and gas cases over the last 15 years including take-or-pay, lease termination, bad-faith pooling, and royalty owner disputes. I have also handled a number of very interesting and complex estate related cases involving breach of fiduciary duty, legal malpractice, paternity, accounting, receivership and will contests. Additionally, I have handled the significant meritorious personal injury cases which came to our firm. These have been in both state and federal courts. Also, I have been involved in several multi-district litigation cases.

In summary, my law practice and professional experience has been quite broad, yet totally restricted to litigation. I handled big cases and small cases, plaintiff and defendant, civil and criminal, trial and appellate, in both state and federal courts. I have been privileged to have an AV rating from Martindale-Hubbell since 1982. I was recognized by the Judges of the Eastern District of Texas in 1986 by my appointment to the five member Bar Admissions Committee for the Eastern District of Texas.

In July 2000, then Governor George W. Bush appointed me Chief Justice of the Twelfth Court of Appeals in Tyler. I was unopposed for re-election in 2000, and 2002. I have enjoyed my service on the Twelfth Court of Appeals immensely. As I tell my friends who ask how I compare it to practicing law, I am working harder, making less, but enjoying it more. When I was in law school, I loved the academic side of the law, and always thought I would like to wind up my career either teaching in law school or being a judge. So, my current position, and the prospect of being appointed as a United States District Judge, are both great honors and the fulfillment of lifetime professional goals.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

During my 23 years as a trial attorney I appeared in court hundreds, if not thousands, of times. For the last several years prior to going on the bench, I limited my practice to a relatively few number of cases of a very significant nature with other attorneys under my direction handling many of the routine contested matters.

- (2) Indicate the percentage of these appearances in

- (A) federal courts; 10% last 10 years, 50% prior to that.
- (B) state courts of record; 90% last 10 years, 50% prior to that.
- (C) other courts. None.

- (3) Indicate the percentage of these appearances in:

- (A) civil proceedings; 95%
- (B) criminal proceedings; 5%.

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 50 - 75 as chief counsel.

- (5) Indicate the percentage of these trials that were decided by a jury.

90%

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None.

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

1. Indigent Clients. I have represented a number of indigent clients in court-appointed cases involving substantial *pro bono* work including:

- A. United States of America v. Tommy Hines; Criminal Action TY-76-38-CR; In the United States District Court of the Eastern District of Texas, Tyler Division. Interstate transportation of stolen cattle.
  - B. State of Texas v. Dennis Cuniff; In the 241<sup>st</sup> Judicial District Court of Smith County, Texas. Murder.
  - C. State of Texas v. Larry Holmes; In the 241<sup>st</sup> Judicial District court of Smith County, Texas. Aggravated Assault.
  - D. United States of America v. Jackie Whiteside; In the United States District Court for the Eastern District of Texas, Tyler Division. Failure to file tax return.
2. Smith County Pro Bono Program. I have been a volunteer in the Smith County Pro Bono Program. This is where the coordinators for the Pro Bono program refer indigent defendants to attorneys in their particular area of expertise.
  3. Indigent Capital Murder Defendant Program. In 1988 I was appointed by Chief Judge William Wayne Justice as a liaison for the Eastern District of Texas for the Indigent Capital Murder Defendant Program.
  4. Individual Clients. I have long had a practice of not charging clients who come to me and cannot afford to pay. There have been a number of individual people whom I have helped over the years at no charge including helping one indigent client establish paternity so that her daughter could obtain child support and social security benefits.
  5. Civic Organizations. I have also provided legal services to various charitable, religious, and civic groups to which I have belonged.
19. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
- (a) the citations, if the cases were reported, and the docket number and date if unreported;
  - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
  - (c) the party or parties whom you represented; and

- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. ***Joanne Miller Glass, et al v. Ben Goodwin and RepublicBank and RepublicBank Tyler, N.A.***; Cause No. 85-1541; In the 114<sup>th</sup> Judicial District Court of Smith County, Texas; Honorable Galloway Calhoun 1984-86.

In this interesting and complex estate case, I represented the plaintiff, Joanne Miller Glass, who was the only daughter of a wealthy East Texas oil man, Kenneth C. Miller. Miller had been the favorite nephew of Daisy Bradford on whose 1,000 acre farm Dad Joiner discovered the East Texas oil field in 1931. Miller died in 1974, leaving his entire estate, including Miller Production Company, 23 producing oil wells on the Daisy Bradford farm, a 10,000 acre south Texas ranch and several million dollars, in trust for the use and benefit of his only daughter, Joanne Miller Glass, and her children. From 1974 to 1984 the trust and estate, including the oil properties, was administered by the co-executors and co-trustees, a local attorney and bank. In 1984, it was discovered that the son of the managing trustee had been misappropriating funds and stealing oil through an underground pipeline for a number of years. Suit was brought against both co-trustees for breach of fiduciary duty and negligence in administration of the trust. It was a very detailed case involving literally thousands of documents, numerous expert and factual witnesses. The legal and factual issues were quite complex. It was an emotionally charged high profile case. It settled on the eve of trial for \$4.4 million.

Judge: Honorable Galloway Calhoun, retired.

3130 Belmead  
Tyler, Texas 75701  
903-597-8015

Attorneys for Defendant RepublicBank Tyler, N.A.:

William D. Lawrence  
F. Lee Lawrence (now deceased)  
LAWRENCE & LAWRENCE  
521 East Second  
Tyler, Texas 75701  
903-597-3688

Mike Joplin  
STRASBURGER & PRICE  
901 Main Street, Suite 4300  
Dallas, Texas 75202  
Office: 214- 651-4300  
Residence: 830- 896-7703



Attorneys for Defendant Ben Goodwin:

L. W. Anderson  
SIFFORD, ANDERSON, VICE & MACFARLANE  
2001 Bryan Street, Suite 2050  
Dallas, Texas 75201  
Office: 214-742-1200  
Residence: 903-882-3432

Charles H. Clark  
604 West Woldert Street  
Tyler, Texas 75702  
(903) 593-2514

2. ***Kenneth Wayne Goodwin v. Joanne Miller Glass***; Cause No. 87-07-278; In the 4<sup>th</sup> Judicial District Court of Rusk County, Texas; Honorable Donald Ross; 1987-88.

About a year after the preceding Miller case was settled, the co-trustee's son who had embezzled millions from the estate filed suit claiming to be the long, lost illegitimate son of the deceased, Kenneth C. Miller. I represented the defendant, Joanne Miller Glass. The case was very significant in that the establishment of paternity could have affected the ownership of the 1,000-acre Daisy Bradford Farm and the royalty on numerous oil wells. The complexity of the case was compounded by the fact that it was a paternity suit involving a birth some 40 years ago. The case was an emotionally charged, high profile case. Discovery was extensive. It actually involved three different trial court cases, and one Writ of Mandamus appeal to the 12<sup>th</sup> Court of Appeals. The case was ultimately tried to a jury verdict in Rusk County, Texas, resulting in a defense verdict for my client.

Judge: Honorable Donald Ross  
Sixth Court of Appeals  
100 North State Line No. 20  
Texarkana, Texas 75501  
903-798-3046

Attorney for Plaintiff Kenneth Wayne Goodwin:

Mr. Carl David Adams  
6060 North Central Expressway  
Dallas, Texas 75206  
214-691-6622

3. ***W. R. Hughey, et al. v. Delhi Gas Pipeline Company***; Cause No. 28-88; In the 114<sup>th</sup> Judicial District Court of Wood County, Texas; Honorable Tommy Wayne Wallace; 1988-89.

This was a gas purchase contract case in which I represented the working interest owners, W. R. Hughey, et al. It involved complex take-or-pay, price deficiency, tax reimbursement and reservoir damage issues, and complicated and unsettled legal issues. The case was hotly contested on both sides and involved extensive discovery, fact witnesses, and expert witnesses. The case ultimately settled for \$3.0 million shortly before trial.

Judge: Honorable Tommy Wayne Wallace  
P.O. Box 1707  
Quitman, Texas 75783

Attorneys for Defendant, Delhi Gas Pipeline Company:

Mr. William B. Wagner  
FULBRIGHT & JAWARSKI  
600 Congress Ave.  
Austin, Texas 78701  
(512) 474-5201

Mr. Raymond Johnson  
P.O. Box 522  
121-A Oak Avenue  
Sulphur Springs, Texas 75482  
903-885-8691

4. ***Tom Harman, et al v. Lone Star Gas Co.***; Cause No. 89-2021-B, in the 114<sup>th</sup> Judicial District Court of Smith County, Texas.

This was another take-or-pay, price deficiency, and tax reimbursement case tried in 1990. I represented the working interest owners, Tom Harman, et al. After obtaining a summary judgment on the legal issues, the case settled on appeal for \$2.75 million plus a future gas price increase from \$1.95/MMBtu to \$6.59/MMBtu for remaining life of the contract.

Attorneys for Defendant, Lone Star Gas Company:

Mr. Randall L. Grasso  
PALMER, ALLEN & MCTAGGART  
8111 Preston, Suite 300  
Dallas, Texas 75225-6308  
214-265-0069

Mr. Michael A. Hatchell  
RAMEY- FLOCK  
500 First Place  
Tyler, Texas 75702  
903-597-3301

5. *Vernon E. Faulconer v. Tennessee Gas Pipeline Co.*; Cause No. A-9643;  
In the 123<sup>rd</sup> Judicial District Court of Panola County, Texas.

This was another take-or-pay case in 1988 which resulted in a \$2.0 million recovery for my client.

Attorneys for Defendant, Tennessee Gas Pipeline:

J. Clifford Gunter, III  
Patricia Fry Edlridge  
Edward S. Hubbard  
BRACEWELL & PATTERSON  
2900 South Tower Pennzoil Place  
Houston, Texas 77001  
713-223-2900

6. *Elizabeth Kozlowski, et al v. Ronald M. Maulhardt, Dart Transit, Inc. and American Can Co.*; Civil Action No. M-85-216-CA; In the United States District Court, Eastern District of Texas, Marshall Division.

This was an auto/truck collision case in which I represented the widow and two minor children of a 38 year old man who was fatally injured when his automobile was rear ended on U.S. 259 south of Marshall by an 18 wheeler. His vehicle was drug over 1,500 feet before it was turned lose and burst into flames. The case involved very complex accident reconstruction issues utilizing computer simulation techniques. The case settled after jury selection for \$2.0 million.

Judge: Honorable Robert M. Parker  
United States Court of Appeals  
221 W. Ferguson, #400  
Tyler, Texas 75702  
903-590-1350

Attorney for Defendant Dart Transit, Inc.:

E. Lawrence Merriman  
MERRIMAN, PATTERSON & ALLISON  
P.O. Drawer 4237  
Longview, Texas 75606  
903-297-7676

7. *LaNelle Railsback, et al v. Laidlaw Waste Systems, Inc. and Laidlaw Waste Systems, Texas, Inc.*; No. 91-1674-C; In the 241<sup>st</sup> Judicial District Court of Smith County, Texas; Honorable Joe Tunnell; 1991-92

This was a 1991 auto/truck collision in which I represented the widow and children of a 50 year old man and his 27 year old son who were killed when a garbage truck lost control and crossed the center line resulting in a head-on collision. The truck had been poorly maintained with defective brakes, steering and suspension. The case involved numerous experts and complex causation questions. The case settled at pre-trial for \$4.2 million.

Judge: Honorable Joe Tunnell (deceased)

Attorney for Defendant, Laidlaw Waste Systems, Inc. and Laidlaw Waste Systems Texas, Inc.:

Mr. Mark Bayer  
GARDERE & WYNNE  
3000 Thanksgiving Tower  
Dallas, Texas 75201  
214-999-3000

Attorney for Cheryl Marie Railsback:

Mr. Jimmy N. Negen  
NEGEM, BICKHAM & CLARK  
440 South Vine  
Tyler, Texas 75702  
903-595-4466

Attorney for Yokohama Tire:

Mr. Tom Fennell  
JONES, DAY, REAVIS & POGUE

2727 No. Harwood St.  
Dallas, Texas 75201  
214-220-3939

Attorney for Commercial Tire:

Mr. David N. Kitner  
STRAUSBURGER & PRICE  
901 Main Street, Suite 4300  
Dallas, Texas 75202  
214-651-4300

8. *Judy Hill et al v. Rocor International et al*; Cause No. 98-00080; In The 294<sup>th</sup> Judicial District Court, Van Zandt County, Texas; 1998-2000.

In this case I represented the family of Mike Hill, the Assistant Superintendent of the Van School District, who was fatally injured when Defendant's 18 wheeler ran a stop sign colliding with my clients pickup truck. His wife, Judy Hill was also seriously injured. Liability was hotly contested with sophisticated accident reconstruction experts testifying for both sides. The case settled in mediation for \$3.5 million.

Judge: Honorable Tommy Wallace

Attorney for Rocor International Inc.

Mr. Clayton Devin  
MCCAULEY, MACDONALD, DEVIN & HUDDLESTON  
3800 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270-2014  
214-744-3300

9. *United States of America v. Tommy Hines*; Criminal Action No. TY-76-22-CA. In the United States District for the Eastern District of Texas, Tyler Division; 1977-78

This was a criminal case where a commercial client of our law firm had been indicted for interstate transportation of stolen cattle. The case was initially tried by one of our senior partners shortly after I had joined the firm. Our client was convicted. (TY-76-322-CA) I was assigned the appeal to the Fifth Circuit. The Fifth Circuit reversed and rendered. This was the first time that the Honorable William Wayne Justice has ever been reversed in a criminal case. To show his appreciation, Judge Justice appointed me to represent the now indigent defendant on a follow up indictment for a similar offense. (TY-76-38-CR). After a week long

trial, the jury found the defendant not guilty.

Judge: Honorable William Wayne Justice  
United States District Court  
903 San Jacinto Blvd., Ste. 310  
Austin, Texas 78701  
512-916-5283

Assistant United States Attorney:

Mr. Otis W. Carroll  
IRELAND, CARROLL & KELLEY  
P.O. Box 7879  
Tyler, Texas 75711  
903-561-1600

10. ***IBP, INC. v. Vernon Calhoun Packing Company, Inc., et al***; Civil Action No. 6:97cv385; In The United States District Court For The Eastern District of Texas, Tyler Division; 1997.

This was a complex environmental breach of contract case. My client, IBP, Inc. had purchased a meat packing facility in Anderson County, Texas for \$17.0 million. Shortly after purchasing it the company identified many significant environmental problems and notified the Texas Natural Resource Commission. The problems almost resulted in having to shut down the plant putting hundreds of employees out of work, but through our lawsuit we were able to recover \$5.0 million from the previous owner in order to make the necessary environmental upgrades and keep the plant open.

Judge: Honorable William Wayne Justice  
United States District Judge  
903 San Jacinto Blvd., Ste. 310  
Austin, Texas 78701  
512-916-5283

Attorney for Plaintiff, Defendants:

Mr. Tracy Crawford  
RAMEY - FLOCK  
500 First Place  
Tyler, Texas 75702  
903-597-3301

20. **Criminal History**: State whether you have ever been convicted of a crime, within ten years

of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

I was a defendant in a minor rear-end fender bender case in 1997. My insurance company settled the case for under \$5,000, but a suit was filed: Cause Number 97-804-E, Tovia Williams v. Leonard Davis, County Court at Law, Smith County, Texas.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I have been, and will continue to, recuse myself in any case which was present at my former law firm (Potter-Minton, P.C.) prior to my departure in July 2000. This would be the primary source of conflicts. Otherwise, I will endeavor to follow the canons of ethics as each situation dictates.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached financial disclosure.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached net worth statement.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.

- (a) If so, did it recommend your nomination?

Yes.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

Senators Gramm and Hutchison have a Federal Judicial Evaluation Committee comprised of 35 leading attorneys from across Texas. It is my understanding that approximately 45 applicants were evaluated for the Eastern District. It is my understanding that I received the highest evaluation from the committee. The process involved completing a questionnaire, much like this one, and then an interview with the committee in Houston. For a detail description of the committee see the article entitled "Bench Scouts" in the October 8, 2001 edition of The Texas Lawyer.

After I was recommended by Senators Gramm and Hutchison, the Justice Department asked me to complete additional questionnaires, including this one. I was interviewed by representatives of The White House, Justice Department, and FBI. I was nominated by President Bush on January 23, 2002.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.



AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1976, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Davis, Leonard E.		<b>2. Court or Organization</b> Eastern District of Texas	<b>3. Date of Report</b> 01/23/2002
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Nominee, U.S. District Judge		<b>5. Report Type (check type)</b> X Nomination, Date 01/23/2002 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2001 to 01/18/2002
<b>7. Chambers or Office Address</b> P. O. Box 4485 Tyler, Texas 75712		<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.</p>			

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)☐ **NONE** (No reportable positions.)**NAME OF ORGANIZATION / ENTITY**

1	Chief Justice	Twelfth Court of Appeals, State of Texas
2	Board of Directors	University of Texas at Tyler Educational Foundation
3	Board of Directors	University of Texas Health Center at Tyler Development Board

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)**DATE****PARTIES AND TERMS**☒ **NONE** (No reportable agreements.)

1	_____	_____
2	_____	_____
3	_____	_____

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)**DATE****SOURCE AND TYPE****GROSS INCOME**  
(Gross, not spouse's)☐ **NONE** (No reportable non-investment income.)

1	2001	State of Texas - Chief Justice, Twelfth Court of Appeals	107,850
2	2001	Smith County, Texas - Chief Justice Supplement	1,501
3	2001	Gregg County, Texas - Chief Justice Supplement	664
4	2001	Henderson County, Texas - Chief Justice Supplement	474

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Davis, Leonard E.	01/24/2002

**IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE (No such reportable reimbursements.)	DESCRIPTION
1	EXEMPT - INITIAL REPORT	
2		
3		
4		
5		
6		
7		

**V. GIFTS**

*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE (No such reportable gifts.)	DESCRIPTION	VALUE
1	EXEMPT - INITIAL REPORT		
2			
3			

**VI. LIABILITIES**

*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	NONE		
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII Page 1 INVESTMENTS and TRUSTS-- Income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					(2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-I) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
1 Bank of America Accounts	B	Interest	K	T	EXEMPT
2 Farm - Smith County, Texas		None	O	W	EXEMPT
3 W. Loop Tract - Smith County, Texas		None	K	W	EXEMPT
4 Cemetery Lots, Tyler, Texas		None	J	R	EXEMPT
5 Texas Tomorrow Fund - College Fund		None	M	T	EXEMPT
6 Vanguard Growth Index Fund - State 401(k)		None	J	T	EXEMPT
7 Mineral Rights, Vermillion Lands Trust, Canada	A	Distribut ion	J	T	EXEMPT
8 Royalty, Lynx Energy Co., Smith County, Texas	A	Royalty	J	W	EXEMPT
9 Royalty, Amoco Production Co., LeFlore County, Oklahoma	D	Royalty	K	W	EXEMPT
10 Working Interest, Hallwood Petroleum, Panola County,	A	Distribut ion	J	W	EXEMPT
11 Working Interest, Hopswell Operating, Texas	A	Distribut ion	J	W	EXEMPT
12 Working Interest, Pure Oil Co., Texas	A	Distribut ion	J	W	EXEMPT
13					
14 Merrill Lynch Taxable Accounts					ALL EXEMPT ↓
15 Alcoa Inc. Common	A	Dividend			
16 CVS Corp Common	A	Dividend			
17 Enron Corp Common	A	Dividend			
<b>1</b> Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 2 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-F)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  (2) Date: Month- Day (3) Value Code (J-F) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					
18 Guidant Corp Common		None			ALL EXEMPT ↓
19 IDEC Pharmaceuticals Common		None			
20 MBNA Corp. Common	A	Dividend			
21 McData Corp Common		None			
22 Mectronic Inc. Common	A	Dividend			
23 Smith International Common		None			
24 Sun Microsystems Common		None			
25 Viasat Inc. Class B Common		None			
26 Williams Companies Common	A	Dividend			
27 Merrill Lynch Taxable Accounts Cash Equivalents	B	Interest	L	T	
28 Alliance Premier Growth Fund	A	Dividend	K	T	
29 Campbell Strategic Allocation Fund		None	K	T	
30 Cisco Systems Common		None	J	T	
31 Citigroup Common	A	Dividend	K	T	
32 Corporate High Yield Fund IV	A	Dividend	K	T	
33 EMC Corp Common		None	J	T	
34 El Paso Corp Common	A	Dividend	J	T	
<b>1</b> Ino/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
<b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3</b> Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Deter: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
35 Exxon Mobil Common	A	Dividend	K	T	ALL EXEMPT ↓
36 General Electric Common	A	Dividend	J	T	
37 Nokia Corp Common	A	Dividend	J	T	
38 Pfizer Inc. Common	A	Dividend	J	T	
39 Schering Plough Common	A	Dividend	J	T	
40 Selectron Corp. Common		None	J	T	
41 Target Corp. Common	A	Dividend	J	T	
42 Tenet Healthcare Common	A	Dividend	J	T	
43 Tyco International Inc. Common	A	Dividend	J	T	
44 Wal Mart Stores Inc. Common	A	Dividend	J	T	↑ EXEMPT
45					
46 Merrill Lynch Retirement Accounts					ALL EXEMPT ↓
47 American Tower Corp Common		None			
48 Computer Science Corp Common		None			
49 CVS Corp Common	A	Dividend			
50 Diamond Offshore Common	A	Dividend			
51 Eastman Chemical Common	A	Dividend			↑ EXEMPT
<b>1</b> Inco/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 I=\$15,001-\$50,000 E=\$50,001 or more <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure (2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)				
NONE (No reportable income, assets, or transactions.)					
52 Elan Corp Common		None			EXEMPT ↓
53 General Motors New Class H Common		None			
54 Georgia Pacific Common	A	Dividend			
55 Guidant Corp Common		None			
56 IDEC Pharmaceuticals Common		None			
57 K Mart Common		None			
58 King Pharmaceuticals Common		None			
59 Maxim Integrated Products Common		None			
60 Network Appliances Common		None			
61 Radioshack Corp Common	A	Dividend			
62 Smith International Common		None			
63 Sun Microsystems Common		None			
64 Viacom Inc. Class B Common		None			
65 Williams Companies Common	A	Dividend			
66 Merrill Lynch Retirement Accounts Cash Equivalents	B	Interest	K	T	
67 Accenture Ltd Class A Common		None	J	T	
68 Ace Ltd Common	A	Dividend	J	T	
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 5 INVESTMENTS and TRUSTS-- Income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure (2) Date: Month-Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)				
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
69 Aetna Inc Common		None	J	T	EXEMPT ↓
70 American Express Company Common	A	Dividend	K	T	
71 American Home Products Common	A	Dividend	J	T	
72 Anheuser Busch Companies Common	A	Dividend	J	T	
73 AON Corp Common	A	Dividend	J	T	
74 Automatic Data Process Common	A	Dividend	J	T	
75 Bank of New York Common	A	Dividend	J	T	
76 Bellsouth Corp Common	A	Dividend	J	T	
77 Bemis Co Common	A	Dividend	J	T	
78 Black & Decker Common	A	Dividend	J	T	
79 Black Box Corp Common		None	J	T	
80 Bristol Myers Squibb Common	A	Dividend	J	T	
81 Burlington Resources Common	A	Dividend	J	T	
82 C H Robinson Worldwide Common	A	Dividend	J	T	
83 Calpine Corp Common		None	J	T	
84 Catalina Marketing Common		None	J	T	
85 Centurytel Inc. Common	A	Dividend	J	T	
<b>1 Inst/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 F2=\$5,000,001 or more <b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3 Val Meth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 6 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Account Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
	If not exempt from disclosure				
	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
86 Certegy Inc. Common		None	J	T	EXEMPT ↓
87 ChevronTexaco Common	A	None	K	T	
88 Cinn Financial Corp Common	A	Dividend	J	T	
89 Cintas Corp Common	A	Dividend	J	T	
90 Cisco Corp Common		None	J	T	
91 Citigroup Common	A	Dividend	K	T	
92 Coca Cola Common	A	Dividend	J	T	
93 Conoco Common	A	Dividend	J	T	
94 Constellation Energy Common	A	Dividend	J	T	
95 CSG Systems Common		None	J	T	
96 Deere Co. Common	A	Dividend	J	T	
97 Devon Energy Common	A	Dividend	J	T	
98 Disney Company Common	A	Dividend	J	T	
99 Du Pont Common	A	Dividend	J	T	
100 Eaton Vance Corp. Common	A	Interest	J	T	
101 El Paso Corp. Common	A	Dividend	J	T	
102 Equifax Inc. Common	A	Dividend	J	T	
<b>1 Val Codes:</b> A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more					
<b>2 Val Codes:</b> J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3 Val Meth Codes:</b> Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					



<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 7 INVESTMENTS and TRUSTS— income, value, transactions</b> <small>(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code (A-H) buyer/seller Day (J-P) (A-H) (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
103 Factset Research Systems Common	A	Dividend	J	T	EXEMPT ↓
104 Fair Isaac & Co. Common	A	Dividend	J	T	
105 Federal Signal Corp Common	A	Dividend	J	T	
106 First Data Corporation Common	A	Dividend	J	T	
107 FleetBoston Financial Common	A	Dividend	J	T	
108 General Electric Common	A	Dividend	J	T	
109 General Motors New Class H Common		None	J	T	
110 H.J. Heinz Company Common	A	Dividend	J	T	
111 Henry Jack & Associates Common	A	Dividend	J	T	
112 Honeywell Intl Common	A	Dividend	J	T	
113 IMS Health Common	A	Dividend	J	T	
114 IBM Common	A	Dividend	J	T	
115 JP Morgan Chase Common	A	Dividend	K	T	
116 Johnson & Johnson Common	A	Dividend	J	T	
117 Koninkl Phillips Common	A	Dividend	J	T	
118 KPMG Consulting Common		None	J	T	
119 LA-2-BOY Common		None	J	T	
1 Incl/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Meth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII Page 8 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  If not exempt from disclosure: (2) Date: Month- Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
120 Eli Lilly Common	A	Dividend	J	T	EXEMPT
121 McDonalds Common	A	Dividend	J	T	✓
122 Mellon Financial Common	A	Dividend	J	T	
123 Merrill Lynch Large Cap Core Fund	A	Dividend	L	T	
124 Monsanto Co. Common	A	Dividend	J	T	
125 National Commerce Financial Common	A	Dividend	J	T	
126 Nokia Corp Common	A	Dividend	J	T	
127 Nordson Corp Common	A	Dividend	J	T	
128 Nortel Networks Corp Common		None	J	T	
129 OM Group Inc Common	A	Dividend	J	T	
130 Pegasus Communications Corp Common		None	J	T	
131 Pfizer Corp Common	A	Dividend	K	T	
132 Pharmacia Corp Common	A	Dividend	J	T	
133 Phillips Petroleum Common	A	Dividend	J	T	
134 Potomac Electric Power Common	A	Dividend	J	T	
135 Prudential Financial Common		None	J	T	
136 Raytheon Company Common	A	Dividend	J	T	
<b>1 Inc/Gain Codes:</b> A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 H2=\$5,000,001 or more					
<b>2 Val Codes:</b> J=\$15,000 or less (Col. C1, D3) K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
<b>3 Val Mth Codes:</b> Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Market					

<b>FINANCIAL DISCLOSURE REPORT</b>		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII Page 9 INVESTMENTS and TRUSTS— income, value, transactions</b> <small>(includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</small>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  If not exempt from disclosure: (2) Date: Month- Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)					
137 Reinsurance Group of America Common	A	Dividend	J	T	EXEMPT ↓
138 Reliant Resources Common		None	J	T	
139 Reynolds & Reynolds Common	A	Dividend	J	T	
140 RPM Inc Common	A	Dividend	J	T	
141 Saca Lee Corp Common	A	Dividend	J	T	
142 Schlumberger Ltd Common	A	Dividend	J	T	
143 Solelectron Corp Common		None	J	T	
144 Sprint Corp Common		None	J	T	
145 W.P. Stewart & Co. Common	A	Dividend	J	T	
146 Strayer Education Inc. Common	A	Dividend	J	T	
147 Syncor International Common		None	J	T	
148 Teleflex Inc. Common	A	Dividend	J	T	
149 Texas Instruments Common	A	Dividend	K	T	
150 Tectron Inc Common	A	Dividend	J	T	
151 Tootsie Roll Industries Common	A	Dividend	J	T	
152 Transocean Sedco		None	J	T	
153 Tribune Co. Common	A	Dividend	J	T	
<b>1</b> Net Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 <b>2</b> Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more <b>3</b> Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Davis, Leonard E.		Date of Report 01/24/2002	
<b>VII. Page 10 INVESTMENTS and TRUSTS— income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)  If not exempt from disclosure: (2) Date: Month- Day (3) Value Code (J-P) (4) Gain Code (A-H) (5) Identity of seller/buyer (if private transaction)
NONE (No reportable income, assets, or transactions.)					
154 Tyco International Common	A	Dividend	K	T	EXEMPT ↓
155 Unocal Corp Common	A	Dividend	K	T	
156 Unumprovident Corp Common	A	Dividend	J	T	
157 US Bancorp Common	A	Dividend	J	T	
158 Valspar Corp Common	A	Dividend	J	T	
159 Verizon Communications Common	A	Dividend	J	T	
160 Wal Mart Stores Common	A	Dividend	K	T	
161 Washington Federal Common	A	Dividend	J	T	
162 Washington Mutual Common	A	Dividend	J	T	
163 XL Capital Ltd Class A Common	A	Dividend	J	T	
164 XTO Energy Common	A	Dividend	J	T	
165					
166 Merrill Lynch Children's Accounts					ALL EXEMPT ↓
167 Merrill Lynch Children's Accounts Cash Equivalents	A	Interest	J	T	
168 Alliance Premier Growth Fund	A	Dividend	K	T	
169 Davis NY Venture Fund	A	Dividend	K	T	
170					
1 Inc./Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Davis, Leonard E.	Date of Report 01/24/2002
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

(Indicate part of report.)

NONE

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Davis, Leonard E.	Date of Report 01/24/2002
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**SECTION HEADING.** (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

**PART 1. POSITIONS** (cont'd.)

Line	Position	Name of Organization/Entity
4	Partner	Potter Investments 1985
5	Partner	WDR Investments
6	Shareholder and Director	Potter-Minton, P.C., formerly Potter, Minton, Roberts, Davis & Jones, P.C.

**PART 3. NON-INVESTMENT INCOME** (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Sale of Cattle from Family Farm - Gross	32,849
6	2000	Potter Minton, P.C., Law Firm compensation prior to appointment as Chief Justice of the Twelfth Court of Appeals.	287,165
7	2000	State of Texas - Chief Justice, Twelfth Court of Appeals	30,140
8	2000	Sale of Cattle from Family Farm - Gross	20,625
9	01-16-02	Potter-Minton, P.C. Trust Account - Final payment of Referral Fee from settlement of plaintiff's case pursuant to Employment Termination Agreement.	4,278

<b>FINANCIAL DISCLOSURE REPORT</b>	<b>Name of Person Reporting</b>	<b>Date of Report</b>
	Davis, Leonard E.	01/24/2002

**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date 1-23-02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 One Columbus Circle, N.E.  
 Suite 2-301  
 Washington, D.C. 20544

## FINANCIAL STATEMENT

NET WORTH as of 01/13/02

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	217,619	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	1,083,566	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	
Real estate owned-add schedule 320 acres and house	880,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	200,000		
Cash value-life insurance			
Other assets itemize:			
Texas Tomorrow Fund	100,000		
		Total liabilities	0
		Net Worth	2,481,185
Total Assets	2,481,185	Total liabilities and net worth	2,481,185
CONTINGENT LIABILITIES	NONE	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	NO
On leases or contracts		Are you defendant in any suits or legal actions?	NO
Legal Claims		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax			
Other special debt			

Positions P/L View by Security

STOCKS & SECURITIES  
As of 01-13-02

Household: DAVIS, LEONARD

Selected Accounts:

BOSS I

## Unrealized Gain/(Loss) Summary By Security

Filters: Off As Of COB Date: 01/11/2002

Note: Positions are net and cost basis excludes fractional shares

Security	Qty	Unit Cost	COB Price	Cost Basis	Mkt Value	Unreal P/L
▼ ACCENTURE LTD CL A <i>ACN</i>	70	26.190	26.470	1,833	1,853	20
▼ ACE LTD <i>ACE</i>	60	39.840	38.000	2,390	2,280	(110)
▼ AETNA INC NEW	50	33.010	35.700	1,651	1,785	135
▼ AMER EXPRESS COMPANY	735	47.184	37.420	34,680	27,504	(7,177)
▼ AMER HOME PRODUCTS	15	62.214	63.050	933	946	13
▼ AMERICAN TOWER CORP CL A <i>AMT</i>	18		8.410		151	Pend Sell
▼ ANHEUSER BUSCH COS INC	35	46.050	45.820	1,612	1,604	(8)
▼ AON CORP COM <i>AON</i>	82	34.641	35.330	2,841	2,897	57
▼ AUTOMATIC DATA PROC	35	59.496	56.910	2,082	1,992	(91)
▼ BANK OF N Y CO INC <i>BNY</i>	55	41.040	44.900	2,257	2,470	212
▼ BELLSOUTH CORP <i>BS</i>	65	38.730	38.600	2,517	2,509	(8)
▼ BEMIS CO INC	85	39.866	48.730	3,389	4,142	753
▼ BLACK & DECKER CORP <i>BDK</i>	25	37.570	37.090	939	927	(12)
▼ BLACK BOX CORP DEL COM <i>BBX</i>	95	41.088	49.190	3,903	4,673	770
▼ BRISTOL MYERS SQUIBB CO <i>BMY</i>	19	52.288	49.550	993	941	(52)
▼ BURLINGTON RESOURCES INC <i>BR</i>	55	37.450	33.510	2,060	1,843	(217)
▼ C H ROBINSON WORLDWIDE <i>CHRW</i>	160	26.950	29.300	4,312	4,688	376
▼ CALPINE CORP	900	46.790	15.100	42,111	13,590	(28,521)
▼ CATALINA MKRTG CORP <i>POS</i>	130	27.390	35.900	3,561	4,667	1,106
▼ CENTURYTEL INC <i>CTL</i>	130	33.833	31.150	4,398	4,050	(349)
▼ CERTEGY INC <i>CEY</i>	100	27.825	34.060	2,782	3,406	624
▼ CHEVRONTXACO CORP	300	81.750	87.410	24,525	26,223	1,698
▼ CINN FINCL CRP OHIO <i>CINF</i>	80	41.100	37.060	3,288	2,965	(323)
▼ CINTAS CORP OHIO <i>CTAS</i>	75	39.069	48.990	2,930	3,674	744
▼ CISCO SYSTEMS INC COM	600	66.813	20.210	40,088	12,126	(27,962)
▼ CITIGROUP INC	800	52.178	49.070	41,743	39,256	(2,487)
▼ COCA COLA COM	425	53.009	45.300	22,529	19,253	(3,276)
▼ CONOCO INC <i>CO</i>	80	28.422	27.960	2,274	2,237	(37)
▼ CONSTELLATION ENERGY GP <i>CEG</i>	80	26.159	27.280	2,093	2,182	90
▼ CSG SYSTS INTL INC COM <i>CSGS</i>	95	38.884	40.300	3,694	3,829	135
▼ DEERE CO <i>DE</i>	40	44.179	43.480	1,767	1,739	(28)
▼ DEVON ENERGY CORP NEW <i>DVN</i>	85	34.010	36.930	2,891	3,139	248
▼ DISNEY (WALT) CO COM STK	50	20.750	21.870	1,038	1,094	56
▼ DU PONT E I DE NEMOURS <i>DD</i>	60	42.530	43.020	2,552	2,581	29
▼ EATON VANCE CORP NVT <i>EV</i>	110	30.758	36.590	3,383	4,025	642
▼ EL PASO CORPORATION	90	45.084	41.770	4,058	3,759	(298)
▼ EQUIFAX INC <i>EFX</i>	100	21.796	23.820	2,180	2,382	202
▼ FACTSET RESH SYS INC <i>FDS</i>	90	23.639	36.700	2,128	3,303	1,175
▼ FAIR ISAAC & CO INC <i>FIG</i>	60	46.070	48.000	2,764	2,880	116
▼ FEDERAL SIGNAL CORP <i>FIS</i>	100	18.098	21.260	1,810	2,126	316
▼ FIRST DATA CORPORATION <i>FDC</i>	15	78.990	78.270	1,185	1,174	(11)
▼ FLEETBOSTON FINL CORP <i>FBF</i>	40	36.250	33.420	1,450	1,337	(113)
▼ GENERAL ELECTRIC	70	40.720	38.230	2,850	2,676	(174)
▼ GENERAL MOTORS NEW CL H	100	14.989	17.150	1,499	1,715	216



• • GEORGIA PACIFIC CORP	0		24.150		0	Pend Sell
• • HEINZ H J CO PV 25CT <i>HNL</i>	40	41.230	40.380	1,649	1,615	(34)
• • HENRY JACK & ASSOC INC <i>JKNY</i>	165	21.750	23.550	3,589	3,886	297
• • HONEYWELL INTL INC DEL <i>HON</i>	35	33.160	33.250	1,161	1,164	3
• • IMS HEALTH INC <i>AX</i>	200	24.770	19.720	4,954	3,944	(1,010)
• • INTL BUSINESS MACH	15	123.182	120.310	1,848	1,805	(43)
• • J P MORGAN CHASE AND CO	1,000	50.700	38.340	50,700	38,340	(12,360)
• • JOHNSON AND JOHNSON COM	25	60.060	58.230	1,502	1,456	(46)
• • K MART CORP	166		3.300		548	Pend Sell
• • KONINKL PHIL E NY SH NEW <i>PHG</i>	70	28.534	29.780	1,997	2,085	87
• • KPMG CONSULTING INC COM <i>KCN</i>	125	16.032	17.010	2,004	2,126	122
• • LA-Z-BOY INC MICHIGAN <i>LZB</i>	185	15.854	21.040	2,933	3,892	960
• • LILLY ELI CO	15	79.687	76.400	1,195	1,146	(49)
• • MCDONALDS CORP COM	70	26.230	26.340	1,836	1,844	8
• • MELLON FINANCIAL CORP	1,000	42.938	39.890	42,938	39,890	(3,048)
• • ML BANK USA RASP	12 F	1.000	1.000	13	13	
• • ML LARGE CAP CORE FUND CL A	8,142	11.599	9.930	94,443	80,850	(13,592)
• • ML RETIREMENT RSRVS CL I	1 F	N/A	0.000	N/A	13	No Cost
• • MONSANTO CO NEW DEL COM <i>MON</i>	40,472 F	1.000	1.000	40,472	40,472	
• • NATIONAL COMMRC FIN COR <i>NCF</i>	45	33.999	33.020	1,530	1,486	(44)
• • NOKIA CORP ADR	180	25.349	25.620	4,563	4,612	49
• • NORDSON CORP <i>NOSN</i>	1,000	36.813	22.810	36,813	22,810	(14,003)
• • NORTEL NETWORKS CORP NEW	80	21.850	26.410	1,748	2,113	365
• • O M GROUP INC <i>OMG</i>	1,100	64.443	8.030	70,888	8,833	(62,055)
• • PEGASUS COMM CP CL A <i>PGTV</i>	60	55.341	63.710	3,320	3,823	502
• • PFIZER INC DEL PV\$0.05	25	10.530	8.960	263	224	(39)
• • PHARMACIA CORP COM	400	42.313	40.600	16,925	16,240	(685)
• • PHILLIPS PETROLEUM	45	43.290	41.280	1,948	1,858	(90)
• • POTOMAC ELEC PWR COM <i>POM</i>	400	66.500	59.250	26,600	23,700	(2,900)
• • PRUDENTIAL FINANCIAL INC	65	22.350	22.360	1,453	1,453	0.65
• • RAYTHEON COMPANY <i>RTN</i>	30	32.100	30.900	963	927	(36)
• • REINSURANCE GRP AMERICA <i>RGA</i>	30	31.980	32.020	959	961	1
• • RELIANT RESOURCES INC <i>REI</i>	100	33.329	32.520	3,333	3,252	(81)
• • REYNOLDS&REYNOLDS A <i>REY</i>	100	16.179	16.060	1,618	1,606	(12)
• • RPM INC OHIO <i>RPM</i>	170	22.613	24.880	3,844	4,230	385
• • SARA LEE CORP COM <i>SLE</i>	260	12.761	14.970	3,318	3,892	574
• • SCHLUMBERGER LTD	85	22.060	21.400	1,875	1,819	(56)
• • SOLECTRON CORP DEL\$0.001	30	55.810	51.420	1,674	1,543	(132)
• • SPRINT CORP PCS COM SR 1	900	27.510	11.650	24,759	10,485	(14,274)
• • STEWART W P AND CO LTD <i>WPL</i>	80	24.011	18.500	1,921	1,480	(441)
• • STRAYER EDUCATION INC <i>STRA</i>	150	21.082	26.500	3,162	3,975	813
• • SYNCOR INTL CORP PV\$CT <i>SCOR</i>	45	42.086	48.260	1,894	2,172	278
• • TELEFLEX INC <i>TPX</i>	100	30.698	28.800	3,070	2,880	(190)
• • TEXAS INSTRUMENTS	75	37.410	46.150	2,806	3,461	656
• • TEXTRON INC	945	62.834	27.240	59,378	25,742	(33,636)
• • TOOTSIE ROLL INDUST <i>TR</i>	20	40.280	41.250	806	825	19
• • TRIBUNE CO NEW <i>TRC</i>	45	37.925	38.270	1,707	1,722	16
• • TYCO INTL LTD NEW COM	50	37.050	38.320	1,853	1,916	64
• • UNOCAL CORP <i>UCL</i>	950	55.755	50.250	52,967	47,738	(5,230)

Positions P/L View By Security

	45	35.861	33.910	1,614	1,526	(88)
UNUMPROVIDENT CORP COM <i>UNUM</i>	95	26.960	27.050	2,561	2,570	9
US BANCORP (NEW) <i>USB</i>	65	20.558	20.370	1,336	1,324	(12)
VALSPAR CORP COM <i>VAL</i>	110	32.592	41.500	3,585	4,565	980
VERIZON COMMUNICATNS COM	35	47.520	49.700	1,663	1,740	76
WAL MART STORES INC	800	49.250	55.800	39,400	44,640	5,240
WASHINGTON FEDL INC <i>WFSL</i>	90	24.660	26.770	2,219	2,409	190
WASHINGTON MUTUAL INC <i>WMU</i>	30	32.000	34.640	960	1,039	79
XL CAPITAL LTD CL A <i>XL</i>	35	91.340	90.420	3,197	3,165	(32)
XTO ENERGY INC	1,500	18.667	15.660	28,000	23,490	(4,510)
Total				753,923	(218,476)	

1/13/02

Positions P/L view by Security

Household: DAVIS, LEONARD

BOSS ID: [REDACTED]

Selected Accounts: [REDACTED]

## Unrealized Gain/(Loss) Summary By Security

Filters: Off As Of COB Date: 01/11/2002

Note: Positions are net and cost basis excludes fractional shares

Security	Qty	Unit Cost	COB Price	Cost Basis	Mkt Value	Unreal P/L
▼ ALLIANCE PREMIER GROWTH FUND INC CLASS C	1,686 F	28.147	18.270	47,457	30,804	(16,653)
▼ CAMPBELL STRATEGIC ALLOCATION FUND LP	23	2,125.640	1,971.700	48,890	45,349	(3,541)
▼ CISCO SYSTEMS INC COM	400	46.729	20.210	18,692	8,084	(10,608)
▼ CITIGROUP INC	400	41.575	49.070	16,630	19,628	2,998
▼ CORPORATE HY FD IV INC	1,666	15.000	15.250	24,990	25,407	417
▼ E M C CORPORATION MASS	300	18.019	17.190	5,406	5,157	(249)
▼ EL PASO CORPORATION <i>EP</i>	178	33.745	41.770	6,007	7,435	1,428
▼ EXXON MOBIL CORP COM	400	39.089	38.500	15,636	15,400	(236)
▼ GENERAL ELECTRIC	400	46.748	38.230	18,699	15,292	(3,407)
▼ ML BANKING ADVANTAGE	72,883	1.000	1.000	72,883	72,883	
▼ NOKIA CORP ADR	400	50.403	22.810	20,161	9,124	(11,037)
▼ PFIZER INC DEL PV\$0.05	200	34.707	40.600	6,941	8,120	1,179
▼ SCHERING PLOUGH CORP	209	14.061	35.130	2,939	7,342	4,404
▼ SOLECTRON CORP DEL\$0.001	600	28.117	11.650	16,870	6,990	(9,880)
▼ TARGET CORP COM	316	17.906	40.300	5,658	12,735	7,077
▼ TENET HEALTHCARE CORP	200	19.675	63.150	3,935	12,630	8,695
▼ TYCO INTL LTD NEW COM	300	44.205	50.250	13,262	15,075	1,813
▼ WAL MART STORES INC	200	55.188	55.800	11,038	11,160	123
▼ 1MTH CAMPBELL STRATEGIC ALLOCATION FUND LP	522	2.127	1.972	1,110	1,029	(81)

Total

329,643 (27,559)

753,923

1,083,566

Senator EDWARDS. Well, welcome to those who are here, and tell the ones back home that we are sorry they weren't able to be here. Judge Godbey?

**STATEMENT OF DAVID C. GODBEY, NOMINEE TO BE DISTRICT  
JUDGE FOR THE NORTHERN DISTRICT OF TEXAS**

Judge GODBEY. Thank you, Mr. Chairman. I am here today with my wife, Beverly Bell Godbey, and my two children, John, who is 9, and Ruth, who is 7. We are delighted to all be here. Thank you, sir.

[The biographical information of Judge Godbey follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
David C. Godbey
2. **Position:** State the position for which you have been nominated.  
  
United States District Judge, Northern District of Texas
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
160th District Court  
600 Commerce St., Suite 493  
Dallas, Texas 75202  
214-653-7273
4. **Birthplace:** State date and place of birth.  
  
9/17/57  
Temple, Texas
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
Beverly Bell Godbey  
attorney  
Gardere Wynne Sewell, L.L.P.  
1601 Elm St., Suite 3000  
Dallas, Texas 75201  
2 dependent children
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  
Harvard Law School  
9/79 to 6/82  
J.D., *magna cum laude*, 6/82

Southern Methodist University  
8/75 to 5/78  
B.S.E.E./B.S. (math), *magna cum laude*, 5/78

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1995-present  
State of Texas  
Judge, 160th District Court  
600 Commerce St., Suite 493  
Dallas, Texas 75202

1983-1994  
Hughes & Luce, L.L.P.  
Partner  
1717 Main St., Suite 2800  
Dallas, Texas 75201

1982-1983  
United States Court of Appeals, Fifth Circuit  
Law clerk to Hon. Irving L. Goldberg (deceased)  
1100 Commerce St., Room 13C6  
Dallas, Texas 75242

1981 (summer)  
Hughes & Hill  
Summer clerk  
1717 Main St., Suite 2800  
Dallas, Texas 75201

1980 (summer)  
Kirkland & Ellis  
Summer clerk  
655 Fifteenth St. NW, Suite 1200  
Washington, D.C. 20005

1978-1979  
Texas Instruments, Inc.  
Electrical engineer  
13500 N. Central Expressway  
Dallas, Texas 75243

approx. 1984-1986  
Dallas Suicide & Crisis Center  
Director  
2808 Swiss Ave.  
Dallas, Texas 75204

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Appointed temporary Justice of the Texas Supreme Court to hear *In re TXU Electric Co.*, \_\_\_ S.W.3d \_\_\_, No. 01-0547 (Tex. Dec. 31, 2001) (pursuant to TEX. GOV'T CODE § 22.005, replacing a Justice who recused); Civil Jurist of the Year, 1997, American Board of Trial Advocates, Dallas Chapter; elected to Harvard Law Review on first year grades; all degrees *magna cum laude*; National Merit Scholarship; SMU School of Engineering Scholarship; Phi Beta Kappa; Tau Beta Pi (engineering honorary).

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Member, American Law Institute; Commissioner, National Conference of Commissioners for Uniform State Laws. Member Dallas (chair Appellate Section, 1996) and American Bar Associations. Appointed to Texas Supreme Court Judicial Campaign Finance Study Committee; Judicial Selection Task Force of the Texas Commission on Judicial Efficiency; State Bar Administration of Rules of Evidence Committee. Toll Fellow, 1998 (Council of State Governments leadership training program). Fellow, Dallas Bar Foundation. Master, Mac Taylor American Inn of Court. Member, Texas Association of State Judges, Republican Lawyers of Dallas.

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain

the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Texas – 1982

United States Northern District of Texas – 1983

United States Court of Appeals for the Fifth Circuit – 1983

Registered Patent Attorney – 1984

United States Supreme Court – 1987

United States Western District of Texas – 1989

Board Certified, Civil Appellate Law, Texas Board of Legal

Specialization – 1993

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Institute of Electrical and Electronics Engineers

First United Methodist Church, Dallas

Lakewood Country Club

Tower Club

Dallas Suicide and Crisis Center (former member, board of directors)

none of these organizations discriminates on the basis of race, sex or religion (excepting the church's religious identity)

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

Note, *Plurality Decisions and Judicial Decisionmaking*, 94 HARV. L. REV. 1127 (1981).

Comment, *Legal Documents as a Metaphor for Computer Programs in Copyright Analysis – A Critique of Whelan and Plains Cotton*, 6 THE COMPUTER LAWYER, August 1989, at 1.



David Godbey & Theodore Stevenson, III, *Can't Touch This: Preventing Enforcement of Trial Court Orders Pending Appellate Review*, delivered at Appellate Practice Before the Dallas Court of Appeals (Dallas Bar Assoc. Appellate Section, February 26, 1993)

I have given numerous Continuing Legal Education talks since 1995, but there is no written or electronic copy or any systematic record of those.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

None.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Good. 11/27/01.

16. **Citations:** If you are or have been a judge, provide:

- (1) a short summary and citations for the ten (10) most significant opinions you have written;

Note – in Texas state court practice it is not customary for trial courts to issue written opinions on most matters. The following list includes all significant opinions I have written, together with a significant oral ruling:

*Kelly A. v. National Medical Enterprises, Inc.*, Cause No. 94-10808, Amended Order on Motion to Disqualify, 3/30/95, mandamus iss., 924 S.W.2d 123 (Tex. 1996) (trial court order is reproduced in the dissent in that reported opinion). A lawyer previously represented Mr. Cronen, a person not a party to the instant suit, as a co-defendant with NME in the prior suit; he then joined the law firm of plaintiffs' counsel, where he continued to represent Mr. Cronen for a brief time. Other lawyers in the firm later filed the instant suit against NME, but not against Mr. Cronen. Trial court held that was not a sufficient basis for disqualification; the Texas Supreme Court held it was, as a matter of law, a basis for disqualification.

*Brower v. Mescalero Apache Tribe*, Cause No. 94-08859, Order on Sanctions, Contempt, and Summary Judgment, 9/29/95. Trial court found that discovery abuse by Mescalero Apache Tribe in connection with discovery incident to determining personal jurisdiction merited striking affirmative defenses including sovereign immunity.

*Camden Property Trust v. Dallas County Flood Control Dist. No. 1*, Cause No. 99-00625, Order Granting Temporary Injunction, 4/11/2000. Property owners in special flood control taxing district who bore a grossly disproportionate share of property taxes within the district, challenged the constitutionality of the property tax. On the factual record at temporary injunction hearing, trial court found that property owners had received no benefit from inclusion in the district and temporarily enjoined collection of the tax.

*Camden Property Trust v. Dallas County Flood Control Dist. No. 1*, Cause No. 99-00625, Findings of Fact and Conclusions of Law, 9/27/2001. Upon trial on the merits of the case cited above, which all parties agreed to try to the court, the evidence showed sufficient evidence of benefit to plaintiffs that trial court found tax was constitutional and court should defer to legislative determination, regardless whether that seemed unfair or unwise to trial court.

*D. Burch, Inc. v. City of Dallas*, Cause Nos. 97-06039, *et al.*, Final Judgment, 8/29/2000. In 14 cases involving related sexually oriented businesses, trial court found that City had improperly denied permission to operate in some cases, and in other cases the City's administrative board had properly found that plaintiffs' nonconforming use had been sufficiently amortized and could be denied permission to continue to operate as a nonconforming sexually oriented business.

*Sugg v. Ridenour*, Cause No. 95-08620, Order on Temporary Injunction, 9/26/96. In common law trademark case, plaintiff was arguably senior user of "Apartment Locators" mark for apartment finding services, and defendants sought to use "A+ Apartment Locator [sic]." Court found that "Apartment Locator" was generic and denied plaintiff's application for temporary injunction, and granted defendant's application to prevent plaintiff from using any "A+" variant of the name.

*Price v. Las Colinas Assoc.*, Cause No. 97-05904, Findings of Fact and Conclusions of Law, 7/22/99. Plaintiff homeowner members of non-profit property owners association sued directors derivatively complaining that directors sold association-owned cable TV system for an unreasonably low price. Association formed a "Special Committee" of disinterested directors, who negotiated a settlement of claims, over the objection of individual plaintiffs. At fairness hearing, trial court found settlement was within the authority of the Special Committee, and alternatively, that the settlement was fair and reasonable, and should be approved.

*Kondos v. Lincoln Property Co.*, Cause No. 00-08709, Class Certification Order, 7/12/01. Order certifying class of persons who received unsolicited mass advertising faxes on behalf of Lincoln Property in alleged violation of Telephone Consumer Protection Act, 47 U.S.C. § 227.

*Martinez v. Texas Health System*, Cause No. 99-07661, Order Regarding Privileges, 8/9/01. Plaintiffs were parents of infants injured by bacterial outbreak in neonatal intensive care unit. Defendant hospital objected to producing records regarding that outbreak based on peer review privilege and patient privacy. This order established ground rules for which types of documents would be privileged and which would not, in general requiring production of most documents relating to efforts by hospital to investigate and control the outbreak.

*Connally v. Brinker*, No. 95-03319 (oral ruling from bench on motion for sanctions), aff'd, No. 05-97-02143-CV (Tex. App. – Dallas, Dec. 19, 2000). Plaintiff avoided summary judgment by filing affidavit alleging existence of longstanding oral partnership that was never reflected in any documents or plaintiff's tax returns; when jury unanimously rejected claim of alleged oral partnership, trial court awarded sanctions of \$300,000 for frivolous lawsuit, as had been warned at hearing on summary judgment.

- (2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and

In almost seven years on the state district court bench, I have had over 6500 case dispositions, including over 220 jury trials to verdict, which in total resulted in over 200 appeals. Of those appeals, some 29 resulted in reversals in whole or in part to date:

*National Medical Enterprises, Inc. v. Godbey*, 924 S.W.2d 123 (Tex. 1996) – trial court abused discretion in not disqualifying plaintiffs' counsel, who hired partner who formerly represented in other litigation a co-defendant of instant defendant

*Dallas County District Attorney v. Doe*, 969 S.W.2d 537 (Tex. App. – Dallas 1998) – criminal district court declined to hear motion to quash subpoena based on constitutionality of election code provision, so civil district court heard merits in declaratory judgment action; court of appeals held that criminal district court erred by not hearing the issue and civil district court erred by hearing the issue; on remand criminal district court reached same result as civil district court, which was later affirmed by court of appeals, *State of Texas v. Doe*, No. 05-99-01091-CR (October 16, 2001)

*Johnson v. Resendez*, 993 S.W.2d 723 (Tex. App. – Dallas 1999) – trial court wrongly denied school officials' motion for summary judgment on immunity on constitutional claims because there was no constitutional right to be free from excessive corporal punishment

*Jorden v. The Ensign-Bickford Co.*, 20 S.W.3d 847 (Tex. App. – Dallas, 2000) – court of appeals reversed grant of summary judgment for manufacturer of stun grenade on government contractor defense, finding a fact issue on whether the government approved reasonably

precise specification for stun grenade and whether grenade in question met those specifications

*Dallas Independent School District v. Finlan*, 27 S.W.3d 220 (Tex. App. – Dallas, 2000) – procedurally complicated dispute between school districts and citizen “watchdog”; summary judgments and dismissals affirmed in part and reversed in part

*Grizzle v. Texas Commerce Bank, N.A.*, 38 S.W.3d 265 (Tex. App. – Dallas, 2001) – trial court erred in following federal district court precedent permitting defendant in putative class action to extinguish putative class representatives’ claims by tendering payment of full amount sought by those individuals

*Fiatallis North America v. Bowie Dozer Service, Inc.*, No 05-96-00016-CV (August 4, 1999) – submitting breach of express warranty question to jury without separate blanks for each defendant was error

*Shelly v. Eubanks*, No 05-96-00195-CV (January 29, 1998) – trial court abused discretion in not granting new trial after entry of default judgment

*Ford v. Chapman*, No. 05-96-00622-CV (June 26, 1998) – affirmed in part and reversed in part on trial court’s grant of judgment NOV for plaintiff for full amount of medical bills established under state statutory procedure preventing defendant from controverting reasonableness or necessity of charges established by uncontroverted affidavit; court of appeals reinstated jury verdict awarding only some of those charges holding jury could believe that only some of those charges were for conditions caused by the incident in question

*Johnson v. City of Carrollton*, No. 05-96-01585-CV (August 12, 1998) – court of appeals reversed grant of summary judgment for City, holding evidence raised a fact issue regarding whether police officer who had car wreck with plaintiff was within the course and scope of employment while driving police car on a personal errand

*Duffin v. Fidelity Investments, Inc.*, No. 05-96-01663-CV (November 18, 1998) – trial court wrongly granted summary judgment in employment discrimination case by following Dallas Court of Appeals opinion that was subsequently overruled by Texas Supreme Court

*Wallace v. Playtex Apparel, Inc.*, No. 05-97-00202-CV (March 31, 1999) – summary judgment on intentional infliction of emotional distress affirmed, summary judgment on retaliatory discharge reversed

*Sanders v. Perez*, No. 05-97-000454-CV (May 21, 1999) – trial court granted judgment NOV for plaintiff for full amount of medical bills established under state statutory procedure

preventing defendant from controverting reasonableness or necessity of charges established by uncontroverted affidavit; court of appeals reinstated jury verdict awarding only some of those charges holding jury could believe that only some of those charges were for conditions caused by the incident in question

*Thirteen Thousand Six Hundred Five Dollars v. The State of Texas*, No. 05-98-00072-CV – court of appeals held evidence was legally insufficient to support trial court’s fact finding that confiscated currency and property were proceeds of combination to commit aggravated promotion of prostitution

*Media Brokers, Inc. v. A.H. Belo Corp.*, No. 05-98-00076-CV (December 15, 2000) – trial court erred in submitting jury issue on ambiguity when neither party had plead ambiguity (although court of appeals apparently agreed contract was in fact ambiguous); case settled on remand when trial court indicated it would permit post-verdict pleading amendment to assert ambiguity instead of holding a new trial

*Investors Life Insurance Co. v. Fliegel*, No. 05-98-01054-CV (August 28, 2000) – trial court erred in construing settlement agreement which reserved issue of attorneys’ fees as admitting liability for attorneys’ fees and thus not requiring proof of underlying cause of action in trial on attorneys’ fees

*Quinn v. National Medical Enterprises, Inc.*, No. 05-98-01403-CV (July 10, 2001) – although trial court correctly granted summary judgment for moving defendants on statute of limitations, case was remanded as to a pro se defendant inadvertently included in trial court order who had not actually moved for summary judgment

*Johnson v. United States Elevator Corp.*, No. 05-98-01792-CV (April 9, 2001) – trial court wrongly failed to apply doctrine of res ipsa loquitor to plaintiff’s claims that elevator free-fell causing injuries and therefore improperly granted summary judgment based on no direct evidence of negligence

*Pitts v. County of Dallas*, No. 05-98-01916-CV (April 30, 2001) – trial court wrongly dismissed plaintiffs’ claims on the face of pleadings because plaintiffs petition alleging collection of an unauthorized fee did not show on its face that it was barred by limitations

*Reitman v. City of Coppell*, No. 05-99-00038-CV (November 18, 1999) – summary judgment affirmed on Open Meetings Act claim, and reversed on declaratory judgment claim because declaratory judgment was proper vehicle to raise claim that city acted arbitrarily and capriciously in denying a license

*City of Dallas v. Ortiz*, No. 05-99-00436-CV (May 18, 2000) – judgment on jury verdict reversed because, as a matter of law, attendee at convention of business that leased convention center from city was not an invitee but a licensee of city

*Ayala v. South West Properties, L.P.*, No. 05-99-01024-CV (August 23, 2000) – fact issue was raised regarding whether plaintiff's claims against incorrectly named defendant were barred by limitations or was equitably tolled and summary judgment on limitations was therefore improper

*Reeves v. Ultra-Realty Co.*, No. 05-99-01144-CV (August 25, 2000) – judgment affirmed on merits of underlying claims, but reversed on attorneys' fees found by jury because evidence failed to segregate fees on compensable claims from non-compensable claims

*Miles v. Ford Motor Co.*, No. 05-99-01258-CV (June 29, 2001) – grant of partial summary judgment in crashworthiness case on manufacturing defect, marketing defect, and punitive damages claims affirmed in part and reversed in part, finding more than a scintilla of evidence of manufacturing and marketing defect and gross negligence (contrary to court of appeals' holding in prior appeal of the case) and reversing summary judgment on those grounds, while affirming summary judgment on claim of malice

*Minor v. Young*, No. 05-99-01579-CV (July 26, 2000) – affirmed in part and reversed in part on partial summary judgment on limitations where plaintiff amended to allege discovery rule after motion was filed

*Nationscredit Corp. v. CSSI, The Support Group, Inc.*, No. 05-99-01612-CV (March 1, 2001) – court of appeals affirms in part and reverses in part judgment entered on mixed jury verdict

*Christie v. Gilmore*, No. 05-00-00665-CV (July 12, 2001) – trial court's grant of no-evidence summary judgment in favor of two defendant doctors in medical malpractice case affirmed on all counts except informed consent as to one defendant, which court of appeals held did not require expert testimony

*Chemd, Inc. v. KPMG Peat Marwick, L.L.P.*, No. 05-00-00816-CV (August 9, 2001) – grant of summary judgment in favor of accounting firm that did not detect problems in underlying data provided by client affirmed on deceptive trade practices claims but reversed on negligence claims

*McMillan v. Computer Translation Systems & Support, Inc.*, No. 05-01-00363-CV (December 19, 2001) – trial court wrongly failed to order arbitration of claims against defendants who were not parties to arbitration agreement when those claims were intertwined with claims against other defendants who were parties to arbitration agreement

Note – The West Publishing Co. editorial note accompanying *ACS Investors, Inc. v. McLaughlin*, 943 S.W.2d 426 (Tex. 1997) erroneously indicates that I was the trial court judge who

was reversed by a unanimous Texas Supreme Court; that case was, in fact, decided by one of my predecessors.

- (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

*See Camden Property Trust v. Dallas County Flood Control Dist. No. 1*, Cause No. 99-00625; *Dallas County District Attorney v. Doe*, 969 S.W.2d 537 (Tex. App. – Dallas 1998) (no trial court opinion), cited above. In addition to those:

*Wilkinson v. Dallas/Fort Worth International Airport Board, et al.*, No. 05-99-01028-CV (Tex. App. – Dallas, January 17, 2001) (no trial court opinion). Hundreds of current and former homeowners in area adjoining D/FW Airport sued for inverse condemnation and takings claims arising out of noise and similar issues related to runway construction and airport expansion. Trial court granted summary judgment for defendants on basis, among other theories, that injuries complained of were non-compensable “community damages.”

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

See attached trial court opinions. Unpublished appellate opinions cited above are available on the Dallas Court of Appeals Web site at:

[www.courtstuff.com/5th](http://www.courtstuff.com/5th)

17. **Public Office, Political Activities and Affiliations:**

- (1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which you were not confirmed by a state or federal legislative body.

None.

- (2) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Tom Luce for Governor, 1990, helped prepare position papers on economic development issues

George Bush for President, 1988, volunteered on local level

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:
  - (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;
 

Law clerk to Hon. Irving L. Goldberg (deceased), United States Court of Appeals for the Fifth Circuit, 8/82-9/83
  - (2) whether you practiced alone, and if so, the addresses and dates;
 

No.
  - (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
 

Hughes & Luce, L.L.P.  
1717 Main St., Suite 2800  
Dallas, Texas 75201  
partner  
10/83-12/94

Judge, 160<sup>th</sup> District Court  
600 Commerce St., Suite 493  
Dallas, Texas 75202  
1/95-present

Temporary Justice, Texas Supreme Court  
Appointed to hear *In re TXU Electric Co.*, No. 01-0547, in place of Justice who recused, pursuant to TEX. GOV'T CODE § 22.005  
12/01
- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.



General civil/commercial litigation in state and federal trial and appellate courts in Texas and around the country, and some limited commercial arbitration and criminal appointments.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Clients were typically corporate entities. Areas of specialization include technology-related litigation, appeals, public-law litigation, and some oil & gas and insurance matters, in addition to general commercial litigation.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

I appeared in court regularly, but not frequently.

- (2) Indicate the percentage of these appearances in

- (1) federal courts;
- (2) state courts of record;
- (3) other courts.

I estimate 50% federal, 50% state.

- (3) Indicate the percentage of these appearances in:

- (1) civil proceedings;
- (2) criminal proceedings.

98% civil, 2% criminal

- (4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

approx. 7

- (5) Indicate the percentage of these trials that were decided by a jury.

43% jury

- (d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I was counsel in *Houston Lawyers' Ass'n v. Attorney General of Texas*, 501 U.S. 419 (1991), but did not orally argue the case. I filed petitions for or oppositions to certiorari in *Plains Cotton Cooperative Ass'n v. Goodpasture Computer Service, Inc.*, *cert. denied*, 484 U.S. 821 (1987); *League of United Latin American Citizens v. Attorney General of Texas*, *cert. denied*, 510 U.S. 1071 (1994); *Christopherson v. Allied Signal Corp.*, *cert. denied*, 503 U.S. 912 (1992). I filed a motion to dismiss in *Mexican American Bar Ass'n v. State of Texas*, *dism'd w.o.j.*, 500 U.S. 940 (1991).

- (e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

While in private practice I represented a variety of pro bono clients through the Legal Services of North Texas East Dallas Legal Aid Clinic. As judge, I periodically presided over pro bono hearings at the same clinic until changes in continuing judicial education requirements made it more difficult for me to preside over family law matters.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (1) the citations, if the cases were reported, and the docket number and date if unreported;
- (2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (3) the party or parties whom you represented; and
- (4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

1. *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc), *cert. denied*, 510 U.S. 1071 (1994). Represented Judge F. Harold Entz as intervenor defending Texas' system of countywide election of trial court judges against attack under Voting Rights Act from the

beginning of the action to the last cert. denied, including one Supreme Court decision on the merits. Trial judge was Hon. Lucius Bunton, appellate judges are indicated in cited opinion and prior appeals cited therein. The cited opinion finally upheld Texas' system of countywide election of judges. I participated in the case from its inception, including examining witnesses at trial, I was principal author of trial and appellate briefs, and I orally argued the case for Judge Entz.

lead counsel for Judge Entz:  
Robert H. Mow, Jr.  
Hughes & Luce, L.L.P.  
1717 Main St., Suite 2800  
Dallas, Texas 75201

counsel for State of Texas:  
Renea Hicks  
800 Norwood Tower  
114 West 7th Street  
Austin, Texas 78701  
512-480-8231

counsel for plaintiffs:  
Edward Cloutman  
3301 Elm St.  
Dallas, Texas 75226  
214-939-9222

2. *Plains Cotton Cooperative v. Goodpasture*, 807 F.2d 1256 (5th Cir.), *cert. denied*, 484 U.S. 821 (1987), (Williams, J.). Lead counsel for Plains Cotton on appeal of denial of temporary injunction in early computer software copyright case. Plaintiff Plains Cotton had software package for marketing cotton; defendant competitor hired an employee of plaintiff who took copies of important portion of the program source code and reproduced the software package in a different programming language. Plaintiff claimed that reproduction of the structure, sequence, and organization of its program infringed its copyright in the program. Court of appeals ruled in favor of Goodpasture and affirmed denial of temporary injunction.

opposing counsel:  
Schuyler Marshall  
The Rosewood Corporation  
100 Crescent Court, Suite 1700  
Dallas, Texas 75201  
214-756-6100

3. *Carrizales v. Wal-Mart*, 794 S.W.2d 129 (Tex. App. – Fort Worth 1990, err. denied) (Lattimore, J.). Represented Wal-Mart in appeal of order vacating \$11.5 million sanction arising out of failure to produce Mr. Sam Walton for deposition in Fort Worth courtroom during pendency of earlier appeal of sanctions order. *See Wal-Mart, Inc. v. Street*, 754 S.W.2d 153 (Tex. 1988). Trial court judge ordered Mr. Walton to appear for deposition in courtroom in Fort Worth; prior counsel for Wal-Mart unsuccessfully appealed that ruling; due to failure to produce Mr. Walton during pendency of appeal, trial court imposed escalating daily sanctions totalling \$11.5 million, well in excess of amount in controversy. Post-judgment, a replacement trial court judge vacated that sanction. I was member of team that successfully upheld trial court ruling vacating original sanction for Wal-Mart and took lead in drafting briefs.

co-counsel:

Hon. Anne Gardner  
2nd Court of Appeals  
401 W. Belknap, Suite 9000  
Fort Worth, Texas 76196  
817-884-1900

opposing counsel:

Prof. William V. Dorsaneo, III  
Southern Methodist University Law School  
3315 Daniel Ave.  
Dallas, Texas 75275  
214-768-2000

4. *McDaniel v. Continental Apartments Joint Venture*, 887 S.W.2d 167 (Tex. App. – Dallas, 1994) (Maloney, J.), represented joint venture owner of apartment house in post-trial in trial court and in Court of Appeals defending personal injury claim. Balcony fell off wall of apartment complex and killed resident walking under it. Obtained judgment NOV for owner under Texas law providing that claim arising out of condition of property and not contemporaneous activity sounds only in premises liability and not plain negligence; no evidence at trial that owner knew of condition of balcony, precluding liability under premises theory, so judgment NOV on simple negligence was affirmed on appeal. Trial court judge was Hon. Adolph Canales, 298th District Court (Dallas County).

co-counsel:

Kenn Carroll  
Carrington, Coleman, Sloman & Blumenthal  
200 Crescent Court, Suite 1500  
Dallas, Texas 75201  
214-855-3000

opposing counsel:

DAVID C. GODBEY – PAGE 16

Tom Stribling  
114 West. 7th St., Suite 820  
Austin, Texas

5. *Dallas Power & Light Co. v. Westinghouse Electric Co.*, 855 F.2d 203 (5th Cir. 1988) (Hittner, J.). Successfully represented Westinghouse in trial court and in court of appeals on claims by electric utility for multi-million dollar damages caused by broken component inside turbine generator. Obtained summary judgment for defense, which was affirmed on appeal. Tort claims barred by statute of limitations, contract claims barred by contractual limitations of warranty and remedy. Took lead on drafting briefs and argued appeal.

co-counsel:  
R. Doak Bishop  
King & Spalding  
1100 Louisiana, Suite 4000  
Houston, Texas 77002  
713-751-3200

opposing counsel:  
Wm. Stephen Boyd  
Worsham Forsythe Wooldridge L.L.P.  
1601 Bryan Street, 30th Floor  
Dallas, Texas 75201  
214-979-3000

6. *FDIC v. Munn*, 804 F.2d 860 (5th Cir. 1986) (Higginbotham, J.). Successfully represented Southwest Bank of San Angelo in appeal of adverse \$2.8 million jury verdict and judgment in favor of guarantor of loan. Court of appeals held that trial court wrongly failed to submit jury question on consumer status under Texas Deceptive Trade Practices Act and that the balance of the jury verdict on fraud, fraudulent inducement, and unconscionable conflict was irreconcilably in conflict and reversed and remanded for new trial. Took lead in drafting brief but did not argue.

opposing counsel:  
James Hammett  
1004 South Walnut St.  
P.O. Box 786  
Lampasas, Texas 76550  
512-556-8585

7. *Dallas Merchants and Concessionaire's Assoc. v. City of Dallas*, 852 S.W.2d 489 (Tex. 1993) (Hightower, J.). Represented trade association in Texas Supreme Court, successfully challenging municipal ordinance restricting sale of alcoholic beverages within 300

feet of residential area as preempted by Texas Alcoholic Beverage Code, which had less restrictive limits on location. Took lead in drafting appellate briefs but did not argue.

lead counsel:

Eric R. Cromartie  
4247 Brookview  
Dallas, Texas 75220

opposing counsel:

Hon. Sam Lindsay  
United States District Judge  
1100 Commerce St., Room 13B31  
Dallas, Texas 75242  
214-753-2365

8. *Xerox Corp. v. Genmoora Corp.*, 888 F.2d 345 (5th Cir. 1989) (Brown, J.).

Represented directors and appellees and defendants in shareholder derivative action. Trial court dismissed claims against directors or alternatively granted summary judgment for them. Court of appeals reversed, holding plaintiff had sufficiently pleaded injury and trial court improperly denied motion for reconsideration of summary judgment in light of additional late-filed evidence. Took lead in drafting briefs and orally argued.

opposing counsel:

A.B. Conant, Jr.  
Conant, French & Chaney, L.L.P.  
1717 Main St., Suite 3880  
Dallas, Texas 75201  
214-915-0620

9. *Calpetco 1981, L.P. v. Marshall Exploration, Inc.*, 989 F.2d 1408 (5th Cir. 1993)

(Barksdale, J.) Successfully represented Marshall Exploration, an oil and gas exploration company, on appeal of verdict in its favor on \$2 million claim for breach of operating agreement and related tort and deceptive trade practices act claims. Trial court granted summary judgment on overcharge claims and found in favor of Marshall after bench trial on other claims. Court of appeals held that summary judgment on limitations was correct and that sufficient evidence supported trial court's findings that representations underlying Texas Deceptive Trade Practices Act and Securities Act claims were true. Took lead in drafting briefs and orally argued.

opposing counsel:

Carl D. Rosenblum

10. *Woodruff v. Cook*, 721 S.W.2d 865 (Tex. App. – Dallas, 1986) (Stewart, J.). Co-

counsel for independent executor in trial court, where plaintiff's claim to be wife of deceased

was stricken as discovery sanction, and court of appeals, which affirmed sanction. Plaintiff repeatedly failed to produce documents, even in face of agreed order on motion to compel, and trial court eventually granted sanctions striking plaintiffs pleadings and entering judgment for defendant. Trial court judge was Hon. David Jackson.

lead counsel:

Bryant C. Boren, Jr.  
Baker & Botts, L.L.P.  
2001 Ross Ave., Suite 600  
Dallas, Texas 75201  
214-953-6500

opposing counsel:

Martin Peterson  
Assistant District Attorney  
P.O. Box 368  
Meridian, Texas

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

No.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

1. *Lane v. Godbey*, Cause No. 97-6365-B (44th District Court); unhappy litigant filed suit against me and opposing counsel for actions taken as judge presiding over a motor vehicle case in which I was presiding judge. Claims were nonsuited the day of the hearing on my motion for summary judgment on immunity.

2. *Meinershagen v. Hughes & Luce*, Cause No. 89-13945-G (134th District Court), a Hughes & Luce client sued the firm, and for a brief period joined all partners individually as defendants. All partners not directly involved in the representation, including me, were dismissed.

3. I understand a pro se litigant sued me in federal court in Austin regarding a case in which I was presiding judge. I was never served with process and understand the case was dismissed.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I do not anticipate any significant recusal issues arising out of personal financial interests, as our family investments have been primarily in index mutual funds rather than specific stocks. I have been away from my former firm long enough that I do not believe it presents an appearance of impropriety to preside over cases in which it may represent parties. It is my practice and will continue to be my practice to recuse from cases in which my wife's firm appears. I will, of course, comply with the requirements of the Code of Judicial Conduct.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

See attached financial disclosure report.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes.



- (1) If so, did it recommend your nomination?

Yes.

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I submitted a written application to the Gramm/Hutchison Federal Judiciary Evaluation Committee, interviewed with the committee, and then interviewed with Senators Gramm and Hutchison. Following their recommendation, I then interviewed with members of the White House counsel's office, Justice Department, and agents of the FBI conducting the customary background checks. President Bush's nomination on January 23, 2002, then followed.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

AO-10 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Godbey, David C.	<b>2. Court or Organization</b> Northern District of Texas	<b>3. Date of Report</b> 01/28/2002
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (nominee)	<b>5. Report Type (check type)</b> X Nomination, Date 01/23/2002 Initial Annual Final	<b>6. Reporting Period</b> 01/01/2001 to 01/28/2002
<b>7. Chambers or Office Address</b> 160th District Court 600 Commerce St., Suite 493 Dallas, Texas 75202	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts.  
checking the NONE box for each section where you have no reportable information. Sign on the last page.**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
X	NONE (No reportable positions.)	
1		
2		
3		

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements.)	
1		
2		
3		

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
X	NONE (No reportable non-investment income.)		
1	2000	State of Texas - judicial salary	\$106,700
2	2000	Dallas County - judicial salary	\$9,300
3	2000	self-employed, lawyer	
4	2001	State of Texas - judicial salary	\$106,700

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Godbey, David C.	01/28/2002

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1	exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	Chase	credit line	K
2	MBNA	credit card	K
3	Citibank	credit card	J
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 0=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Godbey, David C.		Date of Report 01/28/2002	
<b>VII. Page 1 INVESTMENTS AND TRUSTS – income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Month: Code Code Identity of Day (I-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
1 Wendland Farms Products Liquidating Trust	B	Distribut ion	J	W	exempt
2 Vanguard 500 Index Fund	A	Dividend	L	T	
3 Chase Accounts	A	Interest	K	T	
4 Merrill Lynch S&P 500 Index Fund Class A	A	Dividend	N	T	
5 Merrill Lynch FIMCO Low Duration Fund Class A	A	Dividend			
6 Merrill Lynch NFS Total Return Class A	A	Dividend	J	T	
7 Vanguard Total Bond Market Index Fund	A	Dividend	J	T	
8 TXU common stock	A	Dividend			
9 Dominion Res. common stock	A	Dividend			
10 Employers Retirement System of Texas	B	Interest	K	T	
11 Wendland Farms Joint Venture		None	K	W	
12 Durban Roodepoort Deep Ltd. common stock	A	Dividend			
13 Haliburton Co. common stock	A	Dividend			
14 MGI Pharma, Inc. common stock	A	Dividend			
15 Paine Webber S&P 500 Fund	A	Dividend	J	T	
16 Paine Webber S&P Midcap 400	A	Dividend	K	T	
17 SPY (S&P 500 security)		None	J	T	
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Godbey, David C.		Date of Report 01/28/2002	
<b>VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value/Gain (4) Identity of Month- Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
<b>NONE</b> (No reportable income, assets, or transactions.)					
18 MDY (S&P Midcap 400 security)		None	J	T	
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					
34					
1 Inc/Gain Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H1=\$1,000,001-\$5,000,000 H2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Godbey, David C.	Date of Report 01/28/2002
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## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Godbey, David C.	Date of Report 01/28/2002
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## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	2001	Dallas County - judicial salary	\$9,300
6	2001	self-employed, lawyer	
7	1/2002	State of Texas - judicial salary	\$8475
8	1/2002	Dallas County - judicial salary	\$775
9	1/2002	self-employed, lawyer	

1111

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Godbey, David C.	01/28/2002

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/28/02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$16,426	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	\$21,017
Listed securities-add schedule	\$275,970	Notes payable to relatives	\$32,911
Unlisted securities-add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends	\$32,911	Unpaid income tax	\$55,000
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	\$414,731
Real estate owned-add schedule	\$590,000	Chattel mortgages and other liens payable	\$31,164
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	\$29,750	Visa	\$16,388
Cash value-life insurance		MBNA Mastercard	\$18,627
Other assets itemize:			
Wendland Farm Products Liquidating Trust	\$0		
Wendland Farms Joint Venture	\$0		
Employees Retirement System of Texas	\$45,434	Total liabilities	\$589,838
		Net Worth	\$400,653
Total Assets	\$990,491	Total liabilities and net worth	\$990,491
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	none	Are any assets pledged? (Add schedule)	no
On leases or contracts	none	Are you defendant in any suits or legal actions?	no
Legal Claims	none	Have you ever taken bankruptcy?	no
Provision for Federal Income Tax	none		
Other special debt	none		



## LISTED SECURITIES

226 sh. Vanguard 500 Ix Inv	\$23,662
7300 sh. Merrill Lynch S&P 500 Index Fund class A	\$101,471
5058 sh. PIMCO Low Duration Fund Class A	\$51,326
342 sh. Vanguard 500 Ix Inv	\$35,984
1457 sh. Vanguard T1 B Ix	\$14,950
6,966 units Paine Webber S&P 500	\$14,349
12,362 units Paine Webber S&P Midcap 400	\$17,356
90 sh. SPY (S&P 500 security)	\$10,190
72 sh. MDY (S&P Midcap 400 security)	\$6,682

TOTAL	\$275,970
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## REAL ESTATE OWNED

residence	\$590,000
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## REAL ESTATE MORTGAGES PAYABLE

Guardian Mortgage residence	\$414,731
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Senator EDWARDS. Thank you. Welcome. We are glad to have you all with us. I know this is a good day for you.

Mr. Hanen?

**STATEMENT OF ANDREW S. HANEN, NOMINEE TO BE DISTRICT  
JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS**

Mr. HANEN. Thank you, Mr. Chairman. I would like to introduce my wife, Diane Dillard, and my daughter, Kelly Hanen, who are here today. I have friends, Bill Greendyke from Houston and Mike Clatt from Austin.

[The biographical information of Mr. Hanen follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).

Andrew "Andy" Scott Hanen

2. **Position:** State the position for which you have been nominated.

United States District Judge  
Southern District of Texas

3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.

Hanen, Alexander, Johnson & Spalding, L.L.P.  
910 Travis St., Ste. 1700  
Houston, Texas 77002  
(713) 222-2323

4. **Birthplace:** State date and place of birth.

December 10, 1953  
Elgin, Illinois

5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.

Married to: Dorothy Diane Dillard  
Attorney and Adjunct Professor of Law at South Texas College of Law  
2232 Stanmore  
Houston, Texas 77019

One Dependent Child.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Law School: Baylor University School of Law  
Waco, Texas  
Attended: August 1975-May 1978

Degree Received: Juris Doctorate *Summa Cum Laude* (1978)

College: Denison University  
Granville, Ohio  
Attended: August 1971-May 1975  
Degree Received: Bachelor of Arts *Cum Laude* (1975)

McLennan Community College  
Waco, Texas  
(2 Summer School Courses – summer of 1972)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

**I. Employers (Paid Positions):**

- A. Hanen, Alexander, Johnson & Spalding, L.L.P.  
910 Travis, Suite 1700  
Houston, Texas 77002  
Law Firm – Attorney  
1993-present
- B. Andrews & Kurth, L.L.P.  
600 Travis, Suite 4200  
Houston, Texas 77002  
Law Firm – Attorney  
1979-1993  
Summers of 1977 and 1978 – Law Clerk
- C. Supreme Court of Texas  
Supreme Courts Building  
209 W. 14<sup>th</sup> St.  
Capitol Station  
Austin, Texas 78711  
Briefing Attorney for Chief Justice Joe Greenhill  
1978-1979

- D. Baylor University School of Law  
1114 S. University Parks Dr.  
Waco, Texas 76706  
Professor's Assistant  
1977-1978
- E. Strasburger & Price, L.L.P.  
901 Main St.  
One Main Place  
Box 50100  
Dallas, Texas 75202  
Law Clerk  
Summer – 1977
- F. Naman, Howell, Smith, Lee & Muldrow  
Texas Center  
Ninth & Washington  
Waco, Texas 76703  
Law Clerk  
1976-1977
- G. Texas Department of Corrections (Staff Counsel's Office)  
815 11<sup>th</sup> Street  
Huntsville, Texas 77340  
Law Clerk  
Summer 1976
- H. M. Lipschitz & Co.  
100 Elm Street  
Waco, Texas 76704  
Manual Laborer  
Summer 1975
- II. **Non-Profits, Bar and Civic Organizations of Which I Have Been An Officer Or Director (Unpaid Positions):**
  - A. State Bar of Texas – Member Board of Directors (2000-present)  
1414 Colorado  
Austin, Texas 78701
  - B. Houston Bar Association – Member of Board of Directors and Holder of All Officer Positions (1991-2001)  
1001 Fannin, Suite 1300  
Houston, Texas 77002

- C. Houston Volunteer Lawyers Program – Member Board of Directors and Former Chair (1993-1997)  
712 Main St., 27<sup>th</sup> Floor  
Houston, Texas 77002
  - D. South Main Baptist Church Foundation – Member Board of Directors (Approximately 1997-1998)  
4100 South Main  
Houston, TX 77002
  - E. Leadership Houston – Undergraduate Chair and Member of Board of Directors (1994-1995)  
3015 S. Richmond  
Houston, TX 77098
  - F. Houston Young Lawyers Association – Member of Board of Directors as well as Holder of Most Officer Positions (1983-1990)  
440 Louisiana, Suite 900  
Houston, TX 77002
  - G. The Sunshine Kids – Member Board of Directors (approximately 1987-1992)  
2814 Virginia  
Houston, TX 77098
  - H. Baylor University Alumni Association – Member Board of Directors (1997-1999)  
1212 S. University Park Dr.  
Waco, TX 76706
  - I. Baylor University Law Alumni Association – Member Board of Directors (approximately mid-1980s)  
1114 S. University Parks Dr.  
Waco, TX 76706
8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.
- Not applicable.
9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
- I. **Professional Honors and Awards:**

- A. **Professionalism Award – 2000** (State Bar of Texas – State Bar College) - This award is given annually to the single lawyer in Texas who best exemplifies the qualities of professionalism and serves to promote professional behavior.
- B. **Outstanding Law Review Article in Texas – 1994** – (Texas Bar Foundation) – This award is given annually to the best law review article published in the State of Texas (co-recipient with my co-author Ms. Lori Gallagher).
- C. **Outstanding Young Lawyer of Texas – 1989-90** – (State Bar of Texas – Texas Young Lawyers Association) – This award is given annually to the single young lawyer in Texas who best exemplifies professional proficiency, service to the public and service to the profession.
- D. **Outstanding Young Alumnus – 1990** – (Baylor University Alumni Association) – This recognition is given to alumni under 40 years of age who reflect the standards of Baylor University.
- E. **Outstanding Young Lawyer of Houston – 1989-90** – (Houston Young Lawyers Association) – This award is given annually to the single young lawyer in Houston who best exemplifies professional proficiency, service to the public and service to the profession.
- F. **President’s Award for Outstanding Service to the Houston Bar** – This is an award given to those who have provided outstanding service to the lawyers and citizens of the Harris County area. I received the award 4 times: 1984-85, 1986-87, 1989-90 and 1995-96.
- G. **Board Certified In Civil Trial Law** (Texas Board of Legal Specialization)– I was originally certified in 1987 and then re-certified in 1992 and 1997.

## II. Education Honors and Awards

- A. **Baylor University School of Law**
  - 1. Graduated first in class
  - 2. Baylor Law Review – Editorial Board
  - 3. Judge Abner V. McCall Award - awarded to student making the most outstanding contribution to the law school
  - 4. Dean’s Honor List (all nine quarters)
  - 5. Received various scholarships

**B. Denison University**

1. Graduated with Honors
2. Dean's List
3. Winner of Beta Theta Pi National Leadership Scholarship
4. Interfraternity Council -- President-1974-1975
5. Varsity Baseball -- Captain 1975  
Most Valuable Player 1973, 1974, 1975

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

**State Bar of Texas**

Board of Directors 2000 -- Present  
 Member Professional Development Committee 2000-Present  
 Member Audit and Finance Committee 2000-Present  
 Member Policy Manual Committee 2001-Present (Vice-Chairman)  
 Member Minority Representation Committee 2000-2001  
 Member Texas Center for Legal Ethics and Professionalism 1994-Present  
 Member Recognizing and Resolving Conflicts of Interest-Planning Committee 1996  
 Member Advanced Civil Trial Planning Committee 1992  
 Member President's Task Force on Thurgood Marshall School of Law  
 1988-1992  
 Member Minimum Legal Education Committee (former Vice-Chairman)  
 1988-1991  
 Member Annual Meeting Committee 1991  
 Member National Mock Trial Competition Committee 1989-1991  
 (1991 National Co-Chairman)  
 Member State Bar College  
 Charter Member Texas Supreme Court Historical Society

**Houston Bar Association**

President 1999-2000  
 Immediate Past President 2000-2001  
 President-Elect -- 1998-1999  
 First Vice President-Board of Directors 1996-1997  
 Second Vice President -- Board of Directors 1993-1994  
 Treasurer -- Board of Directors 1992-1993, 1997-1998  
 Secretary -- Board of Directors 1991-1992  
 Board of Directors -- 1994-1996 Ex Officio Member 1988-1989  
 Co-Host Legal Line Radio Talk Show Sponsored on KPRC  
 by the Houston Bar Association



Co-Chairman Saturday Morning in Court Continuing Legal Education  
Program 1981 - Present - Continuing Legal Education Program - Recognized  
for Achievement by Former Chief Justice Warren Burger and by the  
American Bar Association

Chairman, Harris County Dispute Resolution Center, 1997-1998

Membership Committee Chairman 1998-1999

Staff and Staffing Committee Chairman 1996-1997

Facilities Committee Chairman 1994-1995

Finance Committee Chairman 1992-1993, 1997-1998

Audit Committee Chairman 1992-1993, 1997-1998

Lawyers for Literacy Committee

Chairman 1989-1991

Continuing Legal Education Committee

Committee Chairman 1986-1987

Member 1983-1996

Judicial Evaluation Poll Committee Member 1988-1991

Legislative Committee Chairman 1991-1992

Pictorial Directory Committee

Chairman 1984-1985, 1991-1992

#### **Houston Volunteer Lawyers Program**

Chairman-1995-1996

Board of Directors 1993-1997

Pro Bono Volunteer

#### **Houston Young Lawyers Association**

President 1988-1989

President-Elect 1987-1988

Treasurer 1986-1987

Board of Directors 1983-1986

Outstanding Committee Chairman Awards 1981-1982, 1982-1983, 1985-1986

#### **United States District Court for the Southern District of Texas**

Magistrate Judge Merit Review Panel - Member 1995

#### **Additional Memberships Past and Present**

International Association of Defense Counsel

Defense Research Institute

Texas Association of Defense Counsel

Texas Center for Legal Ethics and Professionalism

American Bar Association

State Bar of Texas  
 Texas Bar Foundation – Sustaining Life Fellow  
 Houston Bar Foundation - Life Fellow  
 Houston Young Lawyers Foundation – Charter Fellow  
 Delta Theta Phi Law Fraternity  
 Bar Association of the Fifth Circuit  
 Association of Attorney-Mediators  
 Inns of Court-Garland Walker Chapter  
 Inns of Court-Ex- Officio Board Member  
 Supreme Court Historical Society  
 Texas Association of Civil Trial and Appellate Specialists

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Supreme Court – June 28, 1982  
 United States Court of Appeals for the Fifth Circuit – September 24, 1979  
 United States Court of Appeals of the Eleventh Circuit – October 1, 1981  
 United States District Court for the Southern District of Texas – November 19, 1979  
 United States District Court for the Northern District of Texas – April 8, 1983  
 United States District Court for the Eastern District of Texas – June 30, 1980  
 United States District Court for the Western District of Texas – December 1, 1980  
 State Bar of Texas – May 15, 1978

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

**Baylor University**

Baylor University Alumni Association – Former Member Board of Directors  
 Baylor University Law Alumni Association - Former Member Board of Directors  
 Baylor University Alumni Association - Life Member  
 Baylor Law Review Association (Ex-Editors Association) - Life Member

**Leadership Houston**

Board of Directors 1994-95

Chairman Undergraduate Program 1994-95  
Special Award for Outstanding Service - 1995  
Graduate Class IX.

**South Main Baptist Church**

Member  
South Main Baptist Foundation -- Former Board Member

**Other Memberships Past and Present**

Baylor Bear Foundation  
Owl Club of Rice University  
Republican Party of Harris County and of Texas  
Forum Club of Houston  
Beta Theta Pi Fraternity  
Inns of Court  
Texas Club  
River Oaks Property Owner's Association  
Afton Village Property Owner's Association  
YMCA  
Interfraternity Council-Denison University  
Zoological Society of Houston  
The Sunshine Kids

None of these organizations discriminate.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

"Federal Civil Procedure Update," Litigation Update Institute, State Bar of Texas (January, 2002) (Paper co-authored by Michael Smith and Carl Roth).

"Multidisciplinary Practice," Waco -- McLennan County Bar Association, (Speech Only) (December 2001).

"Disqualification in the Age of Lawyer Mobility," Ethics and Procedure for the Bench and Bar, Texas Association of Defense Counsel (November 2001)

"Legal Ethics and Malpractice," Houston Bar Association -- Continuing Legal Education

(February, 2001).

*"Disqualification of A Lawyer,"* Advanced Expert Witness Course, State Bar of Texas (February, 2001) (Trial Demonstration in Dallas and Houston).

*"Ethical Consideration and Malpractice Prevention in Litigation,"* Litigation and Trial Tactics, University of Houston Law Foundation (December, 2000) (Presentations in Dallas and Houston).

*"Legal Ethics and Malpractice,"* Houston Bar Association - Tax Section (October, 2000).

*"Multidisciplinary Practice and the ABA Proposal,"* Hispanic Bar Association, (Speech Only) (May, 2000).

*"Legal Ethics For Young Lawyers,"* Houston Young Lawyers Association, (Speech Only) (April, 2000).

*"Legal Ethics and Malpractice,"* Enron Law Conference, (April, 2000).

*"Delivery of Legal Services to the Disadvantaged,"* ABA Equal Justice Conference, (Speech Only) (April, 2000).

*"Current Issues in Legal Ethics,"* Matagorda County Bar Association, (Speech Only) (March, 2000).

*"Ethical Issues Encountered in a Federal Court Practice,"* Federal Court Practice 1999, State Bar of Texas, (November, 1999) (Satellite Presentation).

*"Recent Developments in Professional Liability,"* Houston Bar Association (November 1998) (Co-presentation with Robin Harrison).

*"Shoes for the Shoemaker's Children: A Practical Guide and Suggested Forms to Address Ethical Issues,"* Advanced Real Estate Course, State Bar of Texas (Speech Only) (July 1998).

*"Legal Ethics and Malpractice,"* Houston Bar Association - Real Estate Section, (May 1998).

*"Practical and Ethical Considerations of Relationships With Treating Physicians in Mass Tort Settings"* Drug and Medical Device Seminar, Defense Research Institute (May 1997) (Presentation in Chicago).

*"Attorneys, Mediators and Support Staff: Avoiding Conflicts When Employment Relationships Change"* Recognizing and Resolving Conflicts of Interest, State Bar of Texas (May 1997) (Paper co-authored and co-presented with Lori Gallagher)

(Presentations in Houston and Dallas).

*"Defense Expert - Direct and Cross-Examination"* Advanced Trial Advocacy For Winners Course 1997, State Bar of Texas (April 1997) (Trial Demonstration)..

*"Ethical Considerations in Dealing with Violent Crime Cases"* Premises Liability for Violent Crimes Seminar, Defense Research Institute (April 1997) (Presentation in New Orleans).

*"Ethical Considerations and Malpractice Prevention in Litigation"* How to Offer and Exclude Evidence, University of Houston Law Foundation (February 1997) (Presentations in Houston and Austin).

*"The Legal Malpractice Trap and Ethical Sanctions"* Speaker, Greater Houston Legal Secretaries Association (January 1997).

*"Avoiding the Malpractice Trap - Forming and Severing the Attorney-Client Relationship"* Houston Bar Association (January 1997) (Co-authored and co-presented with Jett Hanna).

*"Ethical Issues in Handling Medical Malpractice Cases"* Texas Association of Defense Counsel (September 1996) (Paper co-authored by Jay Old) (Presentation in San Antonio).

*"Ethical Issues in Handling Medical Malpractice Cases,"* Medical Liability One Day Seminar, Texas Association of Defense Counsel, (September, 1996) (Presentation in San Antonio) (Co-authored with Jay Old).

*"Ethical Considerations and Malpractice Prevention In Litigation,"* How to Offer and Exclude Evidence, University of Houston Law Foundation, (March, 1996), (Presentations in Dallas and Houston).

*"Bad Faith Insurance and DTPA Update,"* Legislative Changes, Jefferson County Bar Association (February, 1996).

*"Ethical Considerations and Malpractice Prevention In Litigation,"* How to Offer and Exclude Evidence, University of Houston Law Foundation, (March, 1995) (Presentations in Dallas and Houston).

*"Legal Malpractice,"* Houston Bar Association - Real Estate Section, (March, 1995).

*"Professional Liability of Lawyers and Other Non-Medical Professionals,"* Advanced Civil Trial Course, South Texas College of Law, (March, 1995).

*"Bankruptcy Malpractice,"* 13th Annual Bankruptcy Conference, The University of Texas School of Law, (November, 1994).

*"In Pursuit of a Physician: The Professional Liability Claim,"* Texas Osteopathic Medical Association - 95th Annual Convention and Scientific Seminar, (Speech Only) (June, 1994).

*"Ethical Issues in Negotiation and Settlement of Insurance Matters,"* Insurance Institute, University of Houston School of Law, (May, 1994) (Speech Only) (paper authored by James R. Old, Jr.).

*"Ethical Issues and Malpractice Prevention in Federal Litigation,"* Federal Civil Litigation Update and Review, University of Houston School of Law, (April, 1994) (Presentations in Dallas and Orlando).

*"Legal Ethics and Malpractice,"* General Practice Institute, Baylor University School of Law, (April, 1994).

*"A New Lawyer's Guide to Legal Malpractice Insurance,"* A Guide to the Basics of Law Practice, The Texas Center for Legal Ethics and Professionalism, (Speech Only) (April, 1994).

*"Voor Dire and General Matters,"* Trial Practice and Procedure, Houston Bar Association, (March, 1994) (Co-Presentation with Judge Norman Black - Chief Judge Southern District of Texas and David Berg).

A. Hanen, *"Attorney-Client Conflicts of Interest and Disqualification of Counsel in Texas Litigation,"* 24 TEX. TECH L. REV. 1039 (1993) (Co-authored with Lori Gallagher).

*"Ethical Issues and Malpractice Prevention in Litigation,"* Federal Civil Litigation Update and Review, University of Houston School of Law, (July, 1993) (Presentations in Dallas and Los Angeles).

*"Legal Ethics, Professionalism and the Disciplinary Rules,"* Greater Houston Legal Secretaries Association, (June, 1993).

*"Legal Malpractice Insurance,"* Anticipating and Avoiding Legal Malpractice Claims, State Bar of Texas, (April, 1993).

*"Legal Malpractice Insurance, What It Covers And What It Does Not Cover,"* Houston Bar Association, (April, 1993) (Co-Presentation with Jett Hanna).

*"Ethical Considerations in Federal Court Practice,"* Federal Court Practice Institute, State Bar of Texas, (December, 1992 - February, 1993) (Presentations in Houston, Dallas and Tyler).

*"Professional Liability of Lawyers and Other Non-Medical Professionals,"* Advanced Civil Trial Course, State Bar of Texas, (September, 1992) (Presentations in San Antonio

and Dallas).

"*Ethical Issues and Malpractice Prevention*," Federal Civil Litigation Update and Review, University of Houston School of Law, (July, 1992) (Presentations in Houston and San Francisco).

"*Ethical Considerations and Malpractice Prevention in Litigation*," Advanced Civil Discovery, University of Houston School of Law, (June, 1992) (Presentations in Houston and Dallas).

"*Ethical Considerations in Products Liability Litigation*," Advanced Products Liability Litigation, University of Houston School of Law, (Speech Only) (May, 1992) (Paper Authored by Wayne Clawater).

"*Working With Outside Counsel*," American Corporate Counsel Association, (Speech to Corporate and Securities Section), (May, 1992).

A. Hanen, "*Legal Malpractice Insurance Exclusions, Selected Coverage and Consumer Issues*," 33 S. TEX. L. REV. 75 (1992); republished by permission in 6 National Insurance Law Review 345 (1992), (Co-authored with Jett Hanna).

"*Ethics: What Every Real Estate Lawyer Needs to Know About the Texas Rules of Professional Conduct*," Advanced Real Estate Short Course - University of Houston School of Law, (Speech Only) (November, 1991).

"*Ethics in Practice Before the Southern District of Texas*," United States District Court for the Southern District of Texas Workshop, (Speech Only) (November, 1991).

"*Ethics in Medical Malpractice*," Advanced Medical Malpractice Institute, University of Houston School of Law, (September, 1991). No copy available.

"*Appellate Malpractice*," Houston Bar Association - Appellate Section, (June, 1991). No copy available.

"*Ethical Issues and Malpractice Prevention*," Federal Civil Litigation Update and Review, University of Houston School of Law, (June, 1991) (Presentation in Dallas and San Francisco).

"*Ethics and Malpractice in Litigation*," Advanced Civil Discovery, University of Houston School of Law, (April, 1991) (Presentation in Dallas and Houston).

"*Malpractice Insurance - What it Does Not Cover*," The Law Office of the 90's - Tools to Build an Efficient and Productive Practice, State Bar of Texas, (February, 1991).

"*Legal Malpractice Liability*," St. Mary's Twelfth Annual Procedural Law Institute, St.

Mary's University School of Law and the State Bar of Texas, (November, 1990).

*"Ethical Issues in Medical Malpractice Cases,"* Advanced Medical Malpractice Institute, University of Houston School of Law, (November, 1990) (Paper Co-Authored).

*"Legal Malpractice Update,"* Texas Association of Defense Counsel, (September, 1990).

*"Legal Ethics and Malpractice for Legal Assistants,"* Houston Legal Assistant's Association, (Speech Only) (August, 1990).

*"Legal Malpractice Insurance - Coverage Exclusions-What Your Policy Does Not Cover",* The Lawyer as a Target-Emerging Theories of Liability and Methods of Prevention, State Bar of Texas, (June, 1990). No copy available.

*"Ethics and Malpractice in Litigation",* Advanced Civil Discovery Institute, University of Houston School of Law, (June, 1990), (Presentation in Dallas and Houston).

*"Legal Ethics", How to Offer and Exclude Evidence*, University of Houston School of Law, (April, 1990) (Presentation in Dallas and Houston). No copy available.

*"Judicial Immunity".* Texas Center for the Judiciary (Four City Presentation to all of the Sitting State Judges in Texas), (Speech Only) (March-April, 1990).

*"The New Texas Disciplinary Rules of Professional Conduct with Suggested Forms for Compliance",* Advanced Real Estate Drafting Course, State Bar of Texas, (January, 1990), (Co-Presentation and Paper Co-Authored with D. Diane Dillard).

*"Legal Ethics and Malpractice in Litigation",* Advanced Civil Litigation Institute, South Texas College of Law, (November, 1989).

*"Legal Ethics and the Disciplinary Rules,"* Houston Bar Association, (September, 1989) (Co-Presentation with Justice Eugene Cook).

*"Legal Ethics and Malpractice,"* How to Offer and Exclude Evidence, University of Houston School of Law, (April, 1989) (Presentations in Dallas and Houston).

Legal Ethics and Malpractice, Houston Bar Association, (March, 1989).

Legal Ethics and Malpractice, Houston Bar Association, (September, 1988).

*"Legal Ethics and Malpractice,"* Advanced Personal Injury Short Course, South Texas College of Law, (April, 1988).

*"Legal Ethics and Malpractice,"* Presenting and Excluding Evidence, University of Houston School of Law, (April, 1988).



"*Ethical Considerations - The Attorney-Client Relationship and Malpractice Prevention*," Advanced Civil Trial Short Course, South Texas College of Law, (November, 1987).

Legal Ethics and Malpractice, Houston Bar Association, (August, 1987).

"*Ethical Considerations - The Attorney-Client Relationship*," Advanced Civil Litigation Short Course, South Texas College of Law, (November, 1986).

Saturday Morning in Appellate Court, Houston Bar Association, (Speech Only) (November, 1985).

"*Clergy Malpractice and Confidentiality*," Texas Young Lawyers Association of the State Bar of Texas, (Speech Only) (May, 1985).

Saturday Morning in Appellate Court, Houston Bar Association, (Speech Only) (October, 1983).

"*The Surface Mineral Producer vs. The Oil and Gas Producer: The Need for Peaceful Coexistence*," 29 BAYLOR L. REV. 907 (1977); republished in abstract by The Rocky Mountain Mineral Law Foundation in 15 PUB. LAND & RESOURCES L. DIG. 80 (1978).

"*Magnuson-Moss and The Texas Deceptive Trade Practices Act: An Explosive Combination*," 29 BAYLOR L. REV. 559 (1977).

"*Wearing Jail Clothes and Handcuffs at Trial: Changes in the Presumption of Innocence*," 29 BAYLOR L. REV. 410 (1976).

When there is a listing that says speech only or trial demonstration, the paper was either written by someone else or no paper was published. As such, I have no copy. I do not have any tapes of my speeches nor do I know of the location of any tapes. I do not believe there have been any press reports about any of my speeches.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before Congress.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

Excellent – July, 2001.

16. **Citations:** If you are or have been a judge, provide:

- (1) a short summary and citations for the ten (10) most significant opinions you have written;
- (2) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- (3) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

Not applicable.

17. **Public Office, Political Activities and Affiliations:**

- (1) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

I am serving as a Director of the State Bar of Texas and have been since 2000. I also have served in a number of different capacities for various bar associations and other organizations, but none that would be classified as a “public office.” I was nominated for a federal judgeship in 1992, but my nomination expired before I had a chance for a hearing.

- (2) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

While I have in the past been a volunteer in political campaigns, primarily judicial campaigns, and have served on steering, finance or host committees, I have with two exceptions never held a formal position in a campaign. The two exceptions are: 1) I was Treasurer for Houston City Councilman Gordon Quan’s election campaign in 1999; and 2) I served as Treasurer for Mr. Quan’s re-election campaign in 2001. As treasurer I helped organize campaign events and helped during those events raise

support and raise awareness of Mr. Quan's position on the issues. My participation was much less in Mr. Quan's re-election campaign as he had little opposition.

18. **Legal Career:** Please answer each part separately.

(1) **Describe chronologically your law practice and legal experience after graduation from law school including:**

(1) **whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;**

I served a one year clerkship for Chief Justice Joe Greenhill of the Supreme Court of Texas (1978-1979).

(2) **whether you practiced alone, and if so, the addresses and dates;**

I have never been in solo practice.

(3) **the dates and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.**

Hanen, Alexander, Johnson & Spalding L.L.P.  
910 Travis, Suite 1700  
Houston, Texas 77002  
(1993-present)  
I am a founding partner.

Andrews & Kurth  
4200 Chase Tower  
600 Travis  
Houston, Texas 77002  
(1979-1993)  
I started as an associate attorney in 1979 and then became a partner in 1986.

(2) (1) **Describe the general character of your law practice and indicate by date if and when its character has changed over the years.**

Immediately following graduation from law school I worked at Andrews & Kurth in Houston, Texas for a period of approximately four months (May-August 1978). I researched various issues concerning the "Howard Hughes-Mormon Will" trial and assisted in the preparation of various briefs. In addition, I attended and argued post-trial motions before the Nevada state district court in Las Vegas, Nevada where the trial was held.

In August of 1978 I began a one-year clerkship for the then Chief Justice of the Supreme Court of Texas, Joe Greenhill. My duties included reviewing appellate briefs, analyzing the record, research and preparation of memoranda for use by Judge Greenhill and other members of the Court in conference and on the bench during oral argument. I also participated in the drafting of opinions, primarily for Judge Greenhill, but also for several other members of the Court.

In September of 1979 I began work as an associate in the trial section of the Houston office of the law firm of Andrews & Kurth. My first year was spent primarily on discovery matters for a massive oil and gas case which was pending in the Southern District of Texas. In addition to briefing, document production and organization and the handling of other discovery and pre-trial matters, I participated in preparing this case for trial. Following the settlement of this case, I obtained my own trial docket. Between 1980 and approximately 1992 I handled a docket which annually averaged approximately 100 cases. I initially concentrated on defending doctors in medical malpractice cases. Over the years my practice expanded to include commercial litigation, the defense of products liability cases, as well as the defense of legal malpractice cases. At Andrews & Kurth, I also handled a wide variety of cases unrelated to my primary practice. I have represented clients in FELA, ERISA, lender liability, and civil rights actions, and even represented one client in an antitrust action filed before the Federal Trade Commission.

After my nomination to the federal bench expired in 1992, I decided to open my own law firm. With two of my former associates, we started Hanen, Alexander & Spalding, L.L.P. in the spring of 1993. We started with six lawyers. Our firm has grown substantially. We are now named Hanen, Alexander, Johnson & Spalding, L.L.P. and we have seventeen lawyers and nearly fifty employees. My practice has evolved into one which is somewhat difficult to label. I spend a large segment of time in the defense of pharmaceutical companies in single cases as well as in mass tort situations. I also am involved in a variety of complex commercial cases which range from straight contract disputes to patent litigation. I also spend some of my time in toxic tort and personal injury cases. I represent individuals, small companies and firms as well as Fortune 500 companies.

I have handled cases from the initial pleading stage through discovery and trial. I have represented clients in a variety of pre-trial and interlocutory matters such as injunction, special appearance, pre-trial attachment and garnishment, injunctions, class action and class certification and jurisdictional hearings. I have also handled numerous appeals in both state and federal court. Some of these appeals involved cases I tried, while others

involved cases in which I was hired to appeal cases tried by other counsel. I have successfully represented clients before the Texas Courts of Appeals, the Supreme Court of Texas, the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court (by pleadings only). In addition to maintaining this docket, I help supervise a group of younger partners and associates, all of whom are involved in litigation.

- (2) **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

See answer to 2 (1).

- (3) (1) **Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.**

I appear in court frequently. In the last five years I have been extensively involved in the defense of various pharmaceutical products. The vast majority of this work involved the defense of mass torts and participation in a nationwide defense of certain products. As such my overall docket, while extremely busy, does not have the number of cases that I handled in the past when I was handling more insurance defense cases. Additionally, as I have become more experienced the size and exposure involved in the cases I handle has increased dramatically. Consequently, the numbers below represent a shift in the number, size and magnitude of the cases.

- (2) **Indicate the percentage of these appearances in**

- (1) **federal courts;**  
50%  
(2) **state courts of record;**  
50%  
(3) **other courts.**

- (3) **Indicate the percentage of these appearances in:**

- (A) **civil proceedings;**  
100%  
(B) **criminal proceedings.**  
0

- (4) **State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel,**

chief counsel, or associate counsel.

20 approximately, although most of my recent cases settled prior to receiving the actual verdict or judgment. On most of these cases I was sole counsel. In the remainder I was chief counsel in every case but two. In those I was an associate counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

- (A) jury;  
100%
- (B) non-jury;  
Only in preliminary matters

(4) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

My practice before the United States Supreme Court has been limited to filing and answering petitions for writs of certiorari. As such, I have never argued before the Court.

(5) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

Throughout my legal career I have participated in both individual and bar-related pro bono and community service projects. I have been recognized for my individual efforts by four different bar associations. The Houston Bar Association presented me with two President's Awards based upon my service to the public. I received an Award for my leadership of the Houston Volunteer Lawyers Program (HVLP), the organization in Houston that coordinates the legal needs of the indigent and of those who cannot afford a lawyer with lawyer volunteers (as well as providing direct legal services for those in need). The HVLP and its volunteer lawyers perform thousands of hours of pro bono service every year. Additionally, I received a President's Award for my service on the Lawyers For Literacy Committee. That committee is dedicated to providing legal services for literacy groups and to training lawyers to act as literacy tutors so that they can directly help those with reading difficulties. The State Bar of Texas (Young Lawyers Association) and Houston Young Lawyers Association chose me as their Outstanding Young Lawyer in 1989-90 and one-third of the criteria for each award was based upon one's service to the public.

Further, during my presidency of the Houston Bar Association ("HBA"), that Association received two different pro bono related awards. (Obviously, these awards

were due to the work of many people in addition to me.) These awards were the Louis M. Brown Award presented by the ABA and the Star of Achievement Award presented by the State Bar of Texas. The American Bar Association awarded the HBA the prestigious Louis M. Brown Award for innovative delivery of legal services to people of modest means. In connection with the receipt of this award, I made a presentation to other bar association leaders at the ABA mid-year meeting in Dallas in February of 2000. I also made a separate presentation for the American Bar Association at the Equal Justice Conference held in April of 2000 on the topic of educating the public on legal issues. The State Bar of Texas gave the Houston Bar Association the Star of Achievement Award for the state's Best Single Program. This Award was for turning the HBA's annual fall social gathering into a fundraiser to provide legal services to the poor. In just three years, through this gathering, we have raised over \$650,000 for legal services to the poor.

Over the past twenty-two years of private practice I have consistently represented various individuals or groups either directly as a lawyer or as a community volunteer in service to the disadvantaged. Due to the passage of time it is impossible to name all of my activities, dates and hours with specificity; however, a summary of my activities with an estimation of the time involved in this regard follows:

**Houston Volunteer Lawyers Program**

1. Since 1983, I have been a volunteer with the Houston Volunteer Lawyers Program. I have represented clients in areas as diverse as consumer law, insurance law, tort defense and marital relations. My most recent client was a client in need of a divorce. She is the mother of two and indigent. That matter was just concluded earlier this year. The matter I handled just before that would have been a pro bono divorce as well. I have also served clients on a pro bono basis when requested by a member of the judiciary. My most recent appointment by a Court was as an ad litem for a youngster hurt in a scuffle. (Estimate hours: 750 to 1500)
2. I also have served on the Board of Directors for the Houston Volunteer Lawyers Program (HVLP) for four years, including serving as its chairman in 1995-96. The Board serves to direct and oversee the functions of the HVLP and to recruit volunteers for service. The HVLP served thousands of poor and lower income individuals during my tenure on the Board. (Estimated hours: 400-500)
3. As President of the Houston Young Lawyers Association, I created the first AIDS committee that existed in the southeast Texas legal community to serve the legal needs of those affected by this problem. This committee was formed in the fall of 1988 and by the spring of 1989 was already serving those in need. It was so successful that the Houston Bar Association decided to join the project the next year so that more people could receive its benefits.

(Estimated hours: 200)

4. In addition to the clients represented formally through the Houston Volunteer Lawyers Program and the Houston Young Lawyers Association I served on the joint Houston Bar Association – Houston Young Lawyers Association AIDS committee which helped establish a program to provide free legal services to HIV positive indigents and their families. That program was established in approximately 1990-91 and continues today under the auspices of the Houston Volunteers Lawyers Program. (Estimated hours: 100)

**Literacy Committee**

5. In 1989, I was asked by Justice Eugene Cook of the Supreme Court of Texas to establish and lead a committee of the Houston Bar that would involve lawyers in helping to address the literacy needs of the community. The committee organized individuals who not only provided legal services to literacy related groups, but also organized training sessions to train lawyers to teach individuals reading skills. (Estimated hours: 200)

**Legal Advice – Radio Program**

6. For two years at the request of the Houston Bar Association, I co-hosted a legal call-in radio show co-sponsored by KPRC radio and the Houston Bar Association. This program provided a forum for the general public to ask legal questions and to provide referrals to various legal and social service agencies. This project took about 4 hours a week twice a month, plus preparation time. (Estimated hours: 90- 100)

**Legal Line – Free Legal Advice**

7. Throughout the past ten years I have served as a legal line volunteer in the program sponsored by the Houston Bar Association. This is a monthly program in which the general public can call and get free legal advice. (Estimated hours: 50 - 100)

**Pro Bono Summit**

8. In May of 2000, as President of the Bar Association, I organized and moderated the second Houston Pro Bono Summit. This summit brought together judges, managing partners of law firms and pro bono coordinators in an attempt to organize and mobilize the law firms to provide legal services to the poor. The speakers included judges from the Southern District of Texas as well as the Chief Justice of the Supreme Court of Texas. (Estimated hours: 100)



**Habitat for Humanity**

9. In the summer of 1998, I was the coordinator of the first house built by Houston Bar Association's for Habitat for Humanity. In this capacity I organized the Bar volunteers, helped schedule both the training and eventual work shifts of the other volunteers and helped the Bar Association raise the necessary funds. Finally, in addition to those coordination activities, I participated in the actual building of the house. In 2000, during my term as President of the Houston Bar Association, we built a second home. I again participated as a volunteer construction worker and was instrumental in the fund raising effort. (Estimated hours: 200)

**Dispute Resolution Center**

10. I have served as the chair of the Alternative Dispute Resolution Committee which acts as the Board of Directors of the Dispute Resolution Center. This is a non-profit organization sponsored by the Houston Bar Association in conjunction with Harris County to encourage and facilitate peaceful settlements of disputes both before and after litigation has resulted. Additionally, it has emphasized working in the neighborhoods of Houston to resolve disputes before they lead to more adverse consequences. The Center not only provides pro bono mediation services, but it also provides training for individuals and groups in dispute resolution. In addition to chairing this group in 1997-98, I recently helped represent on a pro bono basis its executive director in a lawsuit filed against him. That lawsuit was successfully concluded on his behalf in 2001. (Estimated hours: 200)

**The Sunshine Kids, American Red Cross and Leadership Houston**

11. For several years during the 1980s, I served on the Board of Directors and provided pro bono legal services to The Sunshine Kids, a non-profit group dedicated to improve the quality of life of children with cancer. I have also served as the leader of a major fundraiser for the American Red Cross and as a volunteer and on the Board of Directors of Leadership Houston (1994-95). (Estimated hours: 2000-3000)

**Mock Trial Competitions**

12. In 1989-91, I served on the National Mock Trial Competition Committee and was the National Co-Chairperson in 1991. This event featured mock trials being tried by the regional champions of law schools from throughout the nation. These competitions were judged by judges and members of the American College of Trial Lawyers. In 1989, I worked with the Dallas Bar Foundation Regional Mock Trial Contest for high school students.

(Estimated hours: 200)

**Baylor University**

13. I have served on the Board of Directors of the Baylor Alumni Association and the Alumni Board of the Baylor University School of Law. The activities on these two boards were to promote the welfare of Baylor University and its mission to promote quality higher education in Texas. (Estimated hours: 100)

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (1) the citations, if the cases were reported, and the docket number and date if unreported;
- (2) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (3) the party or parties whom you represented; and
- (4) describe in detail the nature of your participation in the litigation and the final disposition of the case.

**First Case**

- a. **Style, number, court and date**

*In Re: American Home Products, Inc.*, 985 S.W.2d 68 (Tex. 1998) (Opinion by Judge Owen)

- b. **Summary of case**

This case was a mandamus action in the Supreme Court of Texas. The subject matter before the Court was the disqualification of plaintiffs' counsel. The underlying matter involved claims of an allegedly defective product manufactured by American Home Products. One of plaintiffs' counsel filed lawsuits in four different south Texas counties. An employee of American Homes' local counsel, who had done substantial work on the files, quit and went to work for plaintiffs' counsel. At the trial level, American Home filed a motion to disqualify plaintiffs' counsel based upon this conflict. The motion was denied. Mandamus was sought from the San

Antonio Court of Appeals which was likewise denied. A mandamus was then sought in the Supreme Court of Texas.

The Supreme Court of Texas granted the mandamus holding that the plaintiffs' counsel and his law firm had to be disqualified under prevailing authority and that the label one puts on an employee does not relieve a lawyer of his/her professional and ethical obligations. I was not involved in the underlying mandamus, nor in the trial court proceeding. I co-authored the briefs and argued the case before the Supreme Court of Texas.

**c. My client was:**

American Home Products  
c/o William J. Ruane – Associate General Counsel  
American Home Products Corporation  
Five Giralda Farms  
Madison, NJ 07940-0874  
(973) 660-6105

**d. My co-counsel were:**

David Duggins  
Leslie Benitez  
Michael Klatt  
Clark, Thomas & Winters, L.L.P.  
1200 Chase Bank Bldg.  
700 Lavaca Street  
Austin, Texas 78701  
(512) 472-8800

Gail Dalrymple  
Jane E. Bockus  
George H. Spencer  
Clemens & Spencer  
112 E. Pecan Street, Ste. 1500  
San Antonio, Texas 78205  
(210) 863-4765

Alejandro Acosta  
Delgado, Acosta, Braden & Jones  
221 N. Kansas St., Ste. 1400  
El Paso, Texas 79901  
(915) 544-9997

J.A. "Tony" Canales

Canales & Simonson  
2601 Morgan Avenue  
P.O. Box 5624  
Corpus Christi, Texas 78465-5624  
(512) 883-0601

**e. The counsel for the opposing parties were:**

Donald Hunt  
Mullin, Hoard, Brown,  
Langston, Carr, Hunt & Joy, L.L.P.  
1500 Broadway, Ste. 700  
P.O. Box 2585  
Lubbock, Texas 79408-2585  
(806) 765-7491

Charles R. Watson, Jr.  
Mullin, Hoard & Brown, L.L.P.  
500 S. Taylor St., Ste. 800  
P.O. Box 31656  
Amarillo, Texas 79120-1656  
(806) 372-5050

**Second Case**

**a. Style, number, court and date**

*Ross v. Arkwright Mutual, et. al.*; No. 90-13114; In the 269<sup>th</sup> Judicial District Court  
of Harris County (Judge David West)

Appeal Dismissed  
834 S.W.2d 385 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1992)  
(Opinion by Judge Cannon)

Reversed and Remanded  
866 S.W.2d 590 (Tex. 1993)  
(Opinion by Judge Cornyn)

Opinion on Remand  
892 S.W.2d 119 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1994, no writ)  
(Opinion by Judge Cannon)

Final Opinion  
933 S.W.2d 302 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1996, writ denied)  
(Opinion by Judge Amidei)

**b. Summary of the Case**

This matter was a case in which an attorney sued his former client and a number of other attorneys under a number of theories including libel, slander, civil conspiracy and negligence. The trial court granted a summary judgment on all claims. The court of appeals dismissed the appeal and remanded to that trial court holding that the judgment was not final and therefore unappealable. On appeal the Supreme Court held that the trial court's ruling was indeed a final one and remanded the case to the appellate court for a decision on the merits. On remand, the court affirmed in part and reversed in part sending some issues back to the trial court. The trial court then granted summary judgment on the remaining issues which was affirmed by the court of appeals.

I represented my client, Charles Lipcon, at each stage of this proceeding. I argued both court of appeals' arguments and successfully argued before the Supreme Court of Texas. The case has been frequently cited for the rule it established on the finality of judgments, although the rule created by the court has recently been changed.

**c. My client was:**

Mr. Charles Lipcon  
Lipcon, Pedraza & Rivkind, P.A.  
2 South Biscayne Blvd.  
Miami, Florida 33131

**d. My co-counsel was:**

Shelley Rae Frockt Elias  
Donohue, Brown, Mathewson & Smyth  
140 S. Dearborn, Ste. 700  
Chicago, IL. 60603  
(312) 422-0900

**e. Counsel for other defendants included:**

1. William J. Boyce  
Fulbright & Jaworski  
1301 McKinney, Ste. 5100  
Houston, Texas 77010-3095  
(713) 651-5151
2. Richard A. Sheehy  
Sheehy, Serpe & Warc. A P.C.  
909 Fannin St., Ste. 2500

Houston, Texas 77010-1003  
(713) 951-1000

3. Daniel O. Goforth  
Goforth Lewis, L.L.P.  
1111 Bagby St., Ste. 2200  
Houston, Texas 77002  
(713) 650-0022
  4. Joel Sprott  
Munisteri, Sprott, Rigby, Newsom & Vincent  
3323 Richmond Ave., Ste. A  
Houston, Texas 77098  
(713) 523-8338
  5. Charles B. Holm  
Holm, Bambace & Cotton, L.L.P.  
1301 McKinney, Ste. 3150  
Houston, Texas 77010  
(713) 652-9700
- f. **The counsel for the opposing party were:**
1. Newton Schwartz at the trial level and on appeal  
1911 Southwest Freeway  
Houston, Texas 77098  
(713) 630-0708
  2. David Furlow also represented the plaintiff on appeal.  
Morris & Campbell, A P.C.  
600 Jefferson St., Ste. 800  
Houston, Texas 77002-7906  
(713) 659-8697

**Third Case**

- a. **Style, number, court, presiding judge and date concluded.**

*WellTech, Inc., et. al. v. Cooper Manufacturing Co., et. al.*; Cause No. 84-28765; In the 127<sup>th</sup> Judicial District Court of Harris County, Texas – Judge Sharolyn Wood (1986)

*WellTech, Inc. v. Cooper Manufacturing Co., et. al.*; C.A. No. H-84-3458; In the United States District Court for the Southern District District of Texas, Houston Division – Judge DeAnda (1986)

*In Re: Cooper Manufacturing Corp., Debtors Cooper Manufacturing Corp., Plaintiff v. The Babcock & Wilcox Co.*; Cause No. 84-01061, Chapter 11, Adv. No. 85-0023; In the United States District Bankruptcy Court for the Southern District of Oklahoma – Judge Wilson (1986)

**b. Summary of the case.**

This case involved claims of breach of warranty under the Uniform Commercial Code and breach of contract. It was brought by WellTech, Inc., my client, and others, due to the presence of defective steel used in the construction of a large number of drilling rigs. The case had dual significance. From the viewpoint of the companies involved, both plaintiffs and defendants, the financial viability of some of the parties depended on the outcome of the litigation. From a legal standpoint the case involved three separate lawsuits in state and federal court in two different states.

It involved questions of first impression of federal court jurisdiction under the 1984 amendments to the Federal Bankruptcy Code. It also involved unique questions of conflicts of law, application of the Uniform Commercial Code and application of various consumer protection laws. After many proceedings in bankruptcy court in Tulsa, Oklahoma, federal court in Houston and state court in Houston, and extensive discovery which lasted over a period of years, my client received a extremely favorable settlement. I conducted the vast majority of the discovery and had first chair responsibility in all three jurisdictions.

**c. My client was:**

WellTech, Inc. which has been acquired subsequently by Key Energy  
6 Desta, Ste. 4400  
Midland, Texas 79705  
(915) 620-0300

At the time in question, its General Counsel was:

Clark Gormley – he can now be reached at:

Ocean Shipholding, Inc.  
16211 Park Ten Place  
Houston, Texas 77084  
(281) 579-3700

**d. My co-counsel was:**

J. Mark Penley  
Strasburger & Price  
901 Main St., Ste. 4300  
NCNB Plaza  
Dallas, Texas 75202

(214) 651-4300

**e. Other counsel were:**

Ralph McBride – Counsel for Pride Oil Well Service Co.  
 Bracewell & Patterson  
 711 Louisiana, Ste. 2900  
 Houston, Texas 77002-2781  
 (713) 223-2900

William Fred Hagans – Counsel for Cooper Manufacturing Corporation  
 Hagans, Bobb & Burdine, A P.C.  
 3200 Travis St., 4<sup>th</sup> Floor  
 Houston, Texas 77006  
 (713) 222-2700

**f. The counsel for the opposing parties were:**

Robert Etnyre – Counsel for the Babcock & Wilcox Company  
 Ben Reynolds  
 Royston, Rayzor, Vickery & Williams  
 600 Travis St., Ste. 2200  
 Houston, Texas 77002-2913  
 (713) 224-8380

Louis McCarter – Counsel for United States Steel Company  
 Karl Stern  
 Vinson & Elkins  
 1001 Fannin, Ste. 2300  
 Houston, Texas 77002-6760  
 (713) 758-2222

**Fourth Case**

**a. Style, number, court, presiding judge and date concluded.**

*Wright, et. al. v. Applied Automation, Inc.*; Cause No. C-89-219; In the United States District Court for the Southern District of Texas – Corpus Christi Division – Judge Head (1989).

*Wright, et. al. v. Applied Automation, Inc., et. al.*; Cause No. 89-3499; In the 117<sup>th</sup> Judicial District Court of Nueces County, Texas – Judge Blackmon (1989).

*Wright, et. al. v. Applied Automation, Inc.*; Cause No. 89-3499-B; In the 117<sup>th</sup> Judicial District Court of Nueces County, Texas – Judge Blackmon (1989).



**b. Summary of the case:**

Wright and others ("Wright") were individuals who were injured in a refinery explosion. They sued Applied Automation, Inc., ("Applied"), a subsidiary of the Phillips Petroleum Company, and others to recover damages. Through an oversight by Applied, Wright obtained a default judgment in Corpus Christi state court in the approximate amount of seventy-five million dollars (\$75,000,000.00). I was contacted by the Phillips in-house legal staff to spearhead and coordinate the effort to set aside this judgment. The judgment had, as one would expect, an extremely negative impact on Phillips and represented a significant problem if it were not set aside. The impact of a judgment this size made our prevailing in this case critical for the company. Since the Plaintiffs had severed the default judgment into a separate cause of action in order to finalize it, they had inadvertently created diversity. I organized the effort to remove the case to federal court, and then to proceed to attack the judgment. The Plaintiffs strongly opposed our efforts. The court was presented with unique questions governing removal jurisdiction, timeliness of removal, bonding requirements to supersede a judgment, jurisdiction of a federal court after notice of appeal is filed (but before the motion for new trial is ruled upon) and finally *Erie* questions as to what level of proof would be needed to set aside the default judgment. The Plaintiffs, after finding themselves on the weaker side of the legal arguments and facing the prospect of trying the case in federal court (a jurisdiction which they did not prefer), finally agreed to set aside the default in exchange for Applied agreeing to a remand to state court. At that point the case was referred to local counsel in Corpus Christi to handle.

**c. My client was:**

Applied Automation, Inc.  
c/o In-House Counsel – Eugene Marshall  
Phillips Petroleum Company  
P.O. Box 1967  
Houston, Texas 77251-1967  
(713) 669-3657

**d. My co-counsel was:**

Alfred Ebert, Jr.  
Andrews & Kurth, L.L.P.  
600 Travis St., Ste. 4200  
Houston, Texas 77002  
(713) 220-4150

Other attorneys who participated for Phillips in different areas were:

Marshall Boykin, III  
Wood, Boykin & Wolter, A P.C.  
615 N. Upper Broadway St., Ste. 1100  
Corpus Christi, Texas 78477  
(361) 888-9201

Russell McMains  
Law Offices of Russell McMains  
800 N. Shoreline Blvd., Ste. 2600  
Corpus Christi, Texas 78401  
(361) 887-4455

Michael A. Hatchell  
Hatchell, P.C.  
112 E. Line St., Ste. 304  
P.O. Box 2006  
Tyler, Texas 75710  
(903) 526-6500

**e. Counsel for the Opposing Parties were:**

Scott Rothenberg  
Law Offices of Scott Rothenberg  
4710 Bellaire Blvd., Ste. 160  
Bellaire, Texas 77401-4505  
(713) 667-5300

Scott A. Sanes  
Sanes & Matthews  
6900 Fannin St., Ste. 1160  
Houston, Texas 77030  
(713) 799-8400

**Fifth Case**

**a. Style, number, court, presiding judge and date concluded.**

*Ducote v. Lincoln Electric, et. al.*; Cause No. B-86-1225-CA; In the United States District Court for the Eastern District of Texas – Judge Fisher (November 2, 1987 – November 20, 1987).

*Long v. Lincoln Electric, et. al.*; Cause No. B-82-236-CA; In the United States District Court for the Eastern District of Texas – Judge Parker (1986).

**b. Summary of the case.**

The above-two cases are representative of a series of toxic tort lawsuits spanning over a period of almost twenty years involving hundreds of individual Plaintiffs and multiple Defendants. Throughout this period I represented Air Products and Chemicals, Inc. The Plaintiffs in these cases alleged a variety of illnesses resulting from their exposure to the Defendants' products (primarily toxic chemicals in the former case and welding rods and other related products in the latter). The Defendants, of course, denied these allegations. The significance of this litigation is two-fold. The potential liability to the company was significant especially when one considers the number of outstanding workers (potential Plaintiffs) and the reputation of the forum for favoring Plaintiffs. Throughout this time period I have been able to prevent my client from any adverse verdicts, and perhaps more significantly, Air Products has only contributed to settlements, if at all, in a minimal fashion. I have had the first chair responsibility for all of these cases. I conducted the discovery and first chaired Air Products participation in the trials of these two cases. In the two cases cited, Air Products was dismissed after the plaintiff presented his case in *Ducote*, and Air Products paid a nuisance amount to settle *Long* after the jury was selected.

**c. My client was:**

Air Products and Chemicals, Inc.  
In-House Counsel – Bruce Whitney  
7201 Hamilton Blvd.  
Allentown, PA 18195-1501  
(610) 481-7364

**d. Other counsel were:**

Counsel in *Long*:

G. Byron Sims – Counsel for McGuiness Industrial Maintenance Corp.  
Brown, Sims, P.C.  
2000 Post Oak Blvd., Ste. 2100  
Houston, Texas 77056-4496  
(713) 629-1580

Donald McFall – Counsel for Petro-Tex Chemical Corp.  
McFall, Glidden, Sherwood & Breitbell, A P.C.  
1111 Bagby, Ste. 4800  
Houston, Texas 77002  
(713) 655-8888

David Ledyard – Counsel for Gulf Coast Waste Disposal Authority  
Strong, Pipkin, Nelson, Bissell & Ledyard, L.L.P.

595 Orleans, Ste. 1400  
Beaumont, Texas 77701-3255  
(409) 981-1000

Michael Hendryx – Counsel for Denka Chemical  
Tucker, Hendryx, Taunton, Snyder & Slade, P.C.  
Eight Greenway Plaza, Ste. 1200  
Houston, Texas 77046  
(713) 961-5800

Philip Werner – Counsel for Crown Central Petroleum Corp.  
Werner & Kerrigan, L.L.P.  
1300 Post Oak Blvd., Ste. 2225  
Houston, Texas 77056-3014  
(713) 626-2233

Steven Roberts – Counsel for Champion International Corp.  
Fulbright & Jaworski  
1301 McKinney  
Houston, Texas 77010  
(713) 651-5151

Cleve Bachman (Deceased) – Counsel for GATX and Atlantic Richfield  
Orgain, Bell & Tucker  
470 Orleans Street  
Beaumont, Texas 77701  
(409) 838-6412

Frank Sanders – Counsel for Harris County  
1019 Congress Ave., 15<sup>th</sup> Floor  
Houston, Texas 77095  
(713) 755-7961

**e. Counsel for the opposing party was:**

Joseph K. (Robin) Steele (Deceased)

Counsel in *Ducote*:

**f. Other Counsel were:**

Kyle Wheelus – Counsel for Airco/Air Reduction  
2263 North St.  
P.O. Box 7158  
Beaumont, Texas 77726-7158

(409) 833-0139

John Bissell – Counsel for Union Carbide/Linde  
Strong, Pipkin, Bissell & Ledyard, L.L.P.  
1111 Bagby St., Ste. 2300  
Houston, Texas 77002-2546  
(713) 651-1900

Paul J. Holmes – Counsel for Eutectic  
Paul J. Holmes, P.C.  
550 Fannin St., Ste. 230  
P.O. Box 3746  
Beaumont, Texas 77704-3746  
(409) 835-3482

Richard Sheehy – Counsel for Chemetron  
Sheehy, Serpe & Ware, A.P.C.  
909 Fannin  
2500 Two Houston Center  
Houston, Texas 77010  
(713) 951-1000

J.B. Whittenburg – Counsel for 3M  
Orgain, Bell & Tucker  
470 Orleans, 4<sup>th</sup> Floor  
Beaumont, Texas 77701  
(409) 838-6412

George L. Knapp – Counsel for A.O. Smith  
1111 Bagby St., Ste. 2030  
Houston, Texas 77002  
(713) 650-8206

Charles Holm – Counsel for Lincoln Electric Company  
Holm, Bambace & Cotton, L.L.P.  
1301 McKinney St., Ste. 3150  
Houston, Texas 77010  
(713) 652-9700

James Ware – Counsel for Westinghouse Electric Company  
Sheehy, Serpe & Ware, A.P.C.  
909 Fannin  
2500 Two Houston Center  
Houston, Texas 77010  
(713) 951-1000

James D. Wise, Jr. – Counsel for Teledyne  
4102 Swarthmore  
Houston, Texas 77005  
(713) 666-7424

Don Weitingner – Counsel for Hobart  
1900 N. Memorial Way  
Houston, Texas 77007-8319  
(713) 864-1888

David A. Livingston - Counsel for Miller  
Livingston & Miller, P.C.  
450 Gears Rd., Ste. 625  
Houston, Texas 77067  
(281) 876-3595

**g. Counsel for the opposing party was:**

David Brandom  
490 Park Street  
P.O. Box 4905  
Beaumont, Texas 77704-4905  
(409) 835-6000

**Sixth Case**

**a. Style, number, court, presiding judge and date concluded.**

*Lawrence Grant, et al. v. Bill Stewart, et al.; Cause No. 97-43904*; In the 113th Judicial District Court of Harris County, Texas (1997-2001) Judge Hancock

*In re: Kimball Hill Homes*, 969 S.W.2d 522 (Tex. App. – Houston [14<sup>th</sup> Dist.] 1998, orig. proceeding). (Opinion by Judge Yates)

**b. Summary of the case.**

This case originated as a lawsuit by certain home buyers against a home builder. While the gravamen of their complaints were defects in materials and workmanship, the plaintiffs drafted their complaints in terms of fraud so as to avoid the effects of Texas' Residential Construction Liability Act (RCLA). On behalf of Kimball Hill we filed appropriate motions to enforce the provisions of the Act. The trial court denied the motion so a mandamus was sought in the Court of Appeals. The appellate court granted the mandamus holding that Kimball Hill's position was correct and the application of the RCLA was dependant upon the underlying nature of the claims and

one could not avoid its provisions by artful pleading.

The case was abated pending the application of the RCLA including its provisions concerning alternative dispute resolution and the claims were settled in mediation. I was the lead lawyer in the trial court and argued the case in the Court of Appeals.

**c. My clients were:**

Kimball Hill of Texas and Kimball Hill, Inc.  
c/o Dave Hill  
5999 New Wilke Rd., Suite 504  
Rolling Meadows, IL 60008  
(847) 364-7300

**d. My co-counsel were:**

T. Christopher Trent  
Hanan, Alexander, Johnson & Spalding, L.L.P.  
910 Travis St., Ste. 1700  
Houston, Texas 77002  
(713) 222-2323

Charles J. Pignuolo  
Devlin & Pignuolo, P.C.  
2200 Post Oak Blvd., Suite 700  
Houston, Texas 77056  
(713) 840-9414

**e. Counsel for the other defendant was:**

Mr. R. Paul Yetter  
Yetter & Warden, L.L.P.  
600 Travis, Suite 3800  
Houston, Texas 77002  
(713) 238-2000

**f. Counsel for the opposing parties was:**

S. Tanner Garth  
Fibich, Hampton, Leebron & Garth, L.L.P.  
909 Fannin, Suite 800  
Houston, Texas 77010-9998  
(713) 751-0025

Seventh Case**a. Style, number, court, presiding judge and date concluded.**

*Hall, et. al. v. Helicopteros Nacionales de Colombia* ("Helicol"); Cause No. 1087423; In the 190<sup>th</sup> Judicial District Court of Harris County – Judge Heard (1980).

**b. Summary of the case.**

The most significant case to the overall law in this country in which I participated is one in which my role was limited primarily to the actual trial of the case. This case has established controlling principles of constitutional limitations on state court jurisdiction. This was a case resulting from a helicopter crash which occurred in the mountains of Colombia. The plaintiffs were the family members of the oil workers who were killed in the crash. I was local counsel and second chair at the trial for Helicol, a Colombian helicopter company. In addition to second chairing the trial, I presented the initial motions and briefs challenging the jurisdiction of the trial court.

The trial court overruled our challenge to the jurisdiction and the case was tried to a jury. The trial court judgment was adverse, but Helicol prevailed at the First Court of Appeals, *Helicopteros Nacionales de Colombia v. Hall, et. al.*; 616 S.W.2d 247 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1981). This judgment was reversed on rehearing by the Supreme Court of Texas. See, *Hall, et. al. v. Helicopteros Nacionales de Colombia*, 638 S.W.2d 870 (Tex. 1982). The case was ultimately appealed to the United States Supreme Court, by other counsel. It reversed the judgment of the Supreme Court of Texas, sustained Helicol's challenge to the trial courts jurisdiction, and upheld the argument we originally made to the trial court. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed 2d 404 (1984). This case was significant because it helped to delineate constitutional limitations on a state trial court's jurisdiction.

**c. My client was:**

Helicopteros Nacionales de Colombia  
Bogota, Columbia

**d. My co-counsel was:**

James Ingram (Deceased) –my co-counsel and chief counsel for Helicopteros Nacionales de Colombia  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
300 Convent St., Ste. 1500  
San Antonio, Texas 78205  
(210) 281-7000



e. **Other counsel were:**

John Eddie Williams – Co-Counsel for Bell Helicopter  
Williams & Bailey, L.L.P.  
8441 Gulf Freeway, Suite 600  
Houston, Texas 77017  
(713) 230-2200

Robert Carsey (Deceased) – Co-Counsel for Bell Helicopter  
Fulbright & Jaworski  
1301 McKinney  
Houston, Texas 77010  
(713) 651-5151

Michael P. Graham – Counsel for Williams-Sedco-Horn  
Baker & Botts  
910 Louisiana  
Houston, Texas 77002-4995  
(713) 229-1234

Ken Kuykendall – Counsel for Williams-Sedco-Horn  
Royston, Rayzor, Vickery & Williams  
600 Travis St., Ste. 2200  
Houston, Texas 77002-2913  
(713) 224-8380

f. **Counsel for the opposing parties was:**

George Pletcher  
Helm, Pletcher, Bowen & Saunders, L.L.P.  
2929 Allen Parkway  
2700 America Tower  
Houston, Texas 77019-2157  
(713) 522-4550

**Eighth Case**

a. **Style, number, court, presiding judge and date concluded.**

*Bado Equipment Co., Inc. v. Bethlehem Steel Corporation, et. al.*; Cause No. 84-66654; In the 189<sup>th</sup> Judicial District Court of Harris County, Texas – Judge Millard (1990).

*Bado Equipment Co., Inc. v. Bethlehem Steel Corporation, et. al.*; 814 S.W.2d 464

(Tex. App. – Houston [14<sup>th</sup> Dist.] 1991, no writ) (Opinion by Judge Cannon)

**b. Summary of the case.**

This case presented unique questions under the Texas Business and Commerce Code (Uniform Commercial Code) as to the ownership of equipment attached to a multi-million dollar offshore drilling rig when the buyer of both the equipment and the rig refused to honor its respective contracts. I represented Bethlehem Steel Company, the manufacturer of the rig. We prevailed at the trial court on a summary judgment that was based on prior Fifth Circuit authority and authority from other states. On appeal the court was faced with questions of first impression concerning the priority of perfected security interests under §§9.312 and 9.314 Tex. Bus. and Comm. Code. The Court of Appeals initially reversed the judgment, applying the concept of unjust enrichment in a UCC business context. On rehearing, we were able to convince the Court of Appeals that the concept of unjust enrichment was not applicable in a business context. It is now one of the most frequently cited cases on summary judgments. I had first chair responsibility at both the trial court and appellate levels.

**c. My client was:**

Bethlehem Steel Corporation  
Assistant General Counsel Walter Morrissey  
Law Department  
2041 Martin Tower  
Bethlehem, PA 18016  
(215) 694-5929

**d. My co-counsel were:**

John Wynne  
Andrew & Kurth, L.L.P.  
4200 Chase Tower  
600 Travis  
Houston, Texas 77002  
(713) 220-4200

John Spalding  
Hanen, Alexander, Johnson & Spalding, L.L.P.  
910 Travis Street, Ste. 1700  
Bank One Center  
Houston, Texas 77002  
(713) 222-2323

**e. Other counsel were:**

Walter T. Weathers, Jr. – Counsel for Phoenix Management Corporation  
 Walter T. Weathers, Jr., Attorney at Law  
 500 Dallas St., Ste. 3020  
 Houston, Texas 77002  
 (713) 652-5099

Christopher Byrd – Counsel for Seadrill, Inc. & Cooper Industries, Inc.  
 Vinson & Elkins  
 1001 Fannin, Ste. 2300  
 Houston, Texas 77002-6760  
 (713) 758-2222

**f. Counsel for the opposing party was:**

Bryan Scott  
 1462 Campbell Rd., Ste. 100  
 Houston, Texas 77055  
 (713) 973-6167

**Ninth Case**

**a. Style, number, court, presiding judge and date concluded.**

*Saucedo v. Phillips Petroleum Company*, 670 F.2d 634 (5<sup>th</sup> Cir. 1982) Opinion by Judge Politz

**b. Summary of the case.**

This case involved the liability of a parent corporation for the injuries sustained by an employee of its subsidiary. It was further complicated by two facts: 1) the employee was injured by the very condition he was hired to repair; and 2) that condition, a leaking gas pipeline, was found by the court to be inherently dangerous. The case was tried to the court (United States District Court for the Western District of Texas, Judge Jack Roberts sitting) by Eugene Marshall in-house counsel for Phillips Petroleum Company and Kent Rider, Phillips' local counsel in Austin. After the trial court entered a sizable judgment against Phillips, I was hired to handle the appeal. I was assisted by Fred Knapp, Jr. of my firm. On appeal I argued that the court had made significant legal errors, especially with respect to the issue of imputing the negligence of one company to another and by failing to find any amount of contributory negligence. The Fifth Circuit, however, affirmed the judgment primarily because of the findings of fact made by the trial court. The case is frequently cited in briefs for the proposition that a parent company does not receive any worker's compensation protection in a lawsuit by a subsidiary's employee and that a company can be held responsible for injuries caused by a condition it creates despite the fact the injuries were sustained by the very person hired to repair that

condition.

**c. My client was:**

Phillips Petroleum Company  
In-house counsel – Eugene Marshall  
He can be reached at:  
P.O. Box 1967  
Houston, Texas 77251-1967  
(713) 669-3657

**d. My co-counsel was:**

Fred Knapp, Jr.- now with  
Hicks, Thomas & Lilienstern, L.L.P.  
700 Louisiana St., Ste. 1700  
Houston, Texas 77002  
(713) 547-9100

**e. Other counsel was:**

George Butts – Counsel for Texas Employers Insurance Association  
Brown McCarroll, L.L.P.  
1400 Franklin Plaza  
111 Congress Ave.  
Austin, Texas 78701-4043  
(512) 472-5456

**f. Counsel for the opposing party was:**

Terry L. Weldon  
Law Offices of Terry Weldon  
106 E. 6<sup>th</sup> St., Ste. 700  
Austin, Texas 78701  
(512) 477-2256

**Tenth Case**

**a. Style, number, court, presiding judge and date concluded.**

*Texas Imports v. Allday*, 649 S.W.2d 730 (Tex. Civ. App. – Tyler 1983, writ ref'd n.r.e.) Opinion by Justice Colley

**b. Summary of the case.**

This case involved the seller of a specialized breed of cattle suing the buyer for the failure to pay the purchase price. We represented the buyer of the cattle whose claim that his refusal to pay in full was justified because the cattle were defective. This was upheld on appeal. The trial was handled by Taylor Hicks and I handled the appeal. The trial resulted in a split verdict. The appeal dealt with the applicability of substantial compliance in a case governed by the Texas Business and Commerce Code (Uniform Commercial Code). It also was one of the first, if not the first, Texas case to involve the right of "cure" under §2.508 Tex. Bus. & Comm. Code and the right to accept conforming commercial units while rejecting non-conforming units under §2.601 Tex. Bus. & Comm. Code. I wrote the briefs and argued the case on appeal. Despite the lack of Texas precedent, I convinced the Court of Appeals and then later, by brief, the Supreme Court of Texas that cattle were individual commercial units under the Tex. Bus. Comm. Code and that a buyer had a right to reject a non-conforming "unit."

c. **My client was:**

Edwin Allday (Deceased)

d. **My co-counsel was:**

Taylor Hicks  
Hicks, Thomas & Lilienstern, L.L.P.  
700 Louisiana St., Ste. 1700  
Houston, Texas 77002  
(713) 547-9100

e. **Counsel for the opposing party were:**

Norman Riedmueller  
Norman Riedmueller, P.C. & Associates  
1177 W. Loop South, Ste. 1616  
Houston, Texas 77027-9006  
(713) 965-9900

Tom Alexander  
700 Louisiana St., Ste. 3730  
Houston, Texas 77002  
(713) 439-0000

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been arrested, nor have I been convicted of any crime.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

2000 – Cause No. 2000-21886; *James R. Alexander v. Richmond Venture Partners, L.P.*; In the 151<sup>st</sup> Judicial District Court of Harris County, Texas. A litigant in a Justice of the Peace Court mediated and settled a case. Later he became disenchanted with the settlement. He then sued everybody he could think of including the judge, the other parties, all of the attorneys, the Executive Director of the Harris County Dispute Resolution Center, and me because I was the then current President of the Houston Bar Association. I was not a party, attorney, mediator or witness in the underlying case and had never even heard of it or any of the parties until I was served with the petition. The plaintiff later admitted he sued me by mistake because I was president of the Houston Bar Association. Presumably, he meant to sue the Bar Association alleging that it is a sponsor of the Harris County Dispute Resolution Center. The court granted a summary judgment in my favor and found that the lawsuit was frivolous. A severance has made that judgment final.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I do not know of any conflict that exists. Nevertheless, if one arises I would recuse myself from sitting on any case in which there was a conflict or even the appearance of impropriety in accordance with the Code of Judicial Conduct and any relevant statutes.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans, commitments or other arrangements to pursue outside employment during the term of my service with the court.

24. **Sources of Income:** List sources and amounts of all income received during the

calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

During the preceding year my sole source of income, with the exception of a stock fund, bonds, mutual funds in retirement accounts, interest or other investments, was the income from my law firm. The retirement accounts and individual bonds are listed on the attached financial statement. I have divested myself from all personal ownership of any individual stocks and from the stock fund referenced above. Consequently, my only current investment related to equities is indirectly in the form of mutual funds which are held within the retirement accounts. All bank or money market accounts that pay interest are also listed on the attached statement. I also received payments to conclude the withdrawal benefits from my prior law firm as per its partnership agreement. These payments concluded in December of 2001.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

See attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes

- (1) If so, did it recommend your nomination?

Yes

- (2) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I applied to be considered by Senators Gramm and Hutchinson as a possible candidate. I was then asked to interview with a selection committee. This committee consisted of prominent lawyers from throughout Texas. As a result of the committee's recommendation to the Senators, I was selected to interview with both Senator Hutchinson and Senator Gramm. Following that process, they chose to recommend me to the President. I then interviewed with the White House's Office of General Counsel after which I was processed by the Justice Department.

- (3) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	\$41,300		Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured		
Listed securities-add schedule	\$2,080,000		Notes payable to relatives		
Unlisted securities-add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule		
Real estate owned-add schedule	\$700,000		Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	\$250,000				
Cash value-life insurance					
Other assets itemize:					
IRAs and Retirement	\$692,762				
Appraised Value - Law Firm	\$116,695		Total liabilities		
			Net Worth	\$3,880,757	
Total Assets	\$3,880,757		Total liabilities and net worth	\$3,880,757	
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	\$27,475		Are any assets pledged? (Add schedule)	No	
On leases or contracts	None		Are you defendant in any suits or legal actions?	No	
Legal Claims	None		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	None				
Other special debt	None				



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**FINANCIAL STATEMENT  
OF  
ANDREW S. HANEN AND D. DIANE DILLARD**

All of the following assets and liabilities represent community assets and liabilities.

**ASSETS**

Cash on Hand and in Banks/Other (Schedule 1)	41,300.00
Bonds (Schedule 2)	2,080,000.00
Real Estate - Homestead (Schedule 3)	700,000.00
Automobiles (Approximate Value for 2001 Chevy Suburban and 1995 Lexus)	50,000.00
Hanen, Alexander, Johnson & Spalding, LLP (Approximate Value) Capital Account of Andrew S. Hanen	116,695.00
Retirement Accounts and IRAs (Schedule 4)	692,762.00
Personal Property (Approximate Value)	<u>200,000.00</u>
<b>TOTAL ASSETS:</b>	<b>\$3,880,757.00</b>

**LIABILITIES**

Contingent Liability -- Personal Guarantee of Partnership Debt (Approximate Total)	<u>\$27,475.00</u>
<b>TOTAL LIABILITIES:</b>	<b>\$27,475.00</b>

**RECAPITULATION**

Total Assets	\$3,880,757.00
Less Total Liabilities	<u>27,475.00</u>
<b>NET WORTH OF COMMUNITY ANDREW S. HANEN AND D. DIANE DILLARD</b>	<b><u>\$3,880,757.00</u></b>

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**SCHEDULE 1**  
**CASH ON HAND IN BANKS/OTHER**

Chase Bank, Houston	
Savings Account (as of 01/18/02)	\$8,531.00
Checking Account (as of 01/18/02)	5,654.00
Compass Bank-River Oaks Office (as of 01/18/02)	32,071.00
Merrill Lynch Cash Management Fund (approx. value 01/18/02)	<8,805.00>
Solomon Smith Barney Money Market (as of 01/18/02)	3,849.00
<b>TOTAL:</b>	<b><u>\$41,300.00</u></b>

**SCHEDULE 2**  
**STOCKS AND BONDS**

Municipal Bonds	Kind	Maturity Value	Maturity Date
Texas Public Finance Authority	Coupon	\$100,000	2005
Travis Co. Texas	Coupon	\$100,000	2007
Texas State Water Development	Coupon	\$100,000	2014
Southlake Texas Light, Water & Sewer	Coupon	\$100,000	2016
Georgetown ISD	Coupon	\$100,000	2018
Fort Worth ISD	Coupon	\$100,000	2019
Allen Tex. FRDG & IMPT	Coupon	\$100,000	2019
Del Valle ISD	Coupon	\$100,000	2012
De Soto ISD	Coupon	\$100,000	2015
Aldine ISD	Coupon	\$100,000	2016
Canadian River Mun. Water	Coupon	\$135,000	2018
Houston Texas Water-Sewer System	Coupon	\$105,000	2018
Brownville Texas Arpt Ctfs	Coupon	\$60,000	2019
Lower Colorado River Auth.	Coupon	\$100,000	2021
Arlington Texas ISD	Coupon	\$125,000	2026
Harris County - Houston Tex. Sports Authority	Coupon	\$125,000	2028
University Tex. Rev.	Coupon	\$100,000	2022

<b>Municipal Bonds</b>	<b>Kind</b>	<b>Maturity Value</b>	<b>Maturity Date</b>
Richardson, Texas	Coupon	\$100,000	2021
University of North Texas	Coupon	\$50,000	2024
Aldine ISD	Zero Coupon	\$30,000	2007
Texas A&M	Zero Coupon	\$30,000	2007
Galveston Tex. Pub. Impt	Zero Coupon	\$30,000	2008
Houston ISD	Zero Coupon	\$30,000	2008
Houston Texas Water & Sewer System	Zero Coupon	\$30,000	2008
Houston ISD	Zero Coupon	\$30,000	2010
<b>TOTAL:</b>		<b>\$2,080,000</b>	

**SCHEDULE 3**  
**REAL ESTATE(HOMESTEAD) AND VEHICLES**

Description: House and garage located on 65' x 125' lot  
Address: 2232 Stanmore, Houston, Texas 77019  
Record Title: D. Diane Dillard and Andrew S. Hanen  
Equitable Title: D. Diane Dillard and Andrew S. Hanen  
Lien: \$130,000.00  
Approximate Market Value: \$700,000.00

Description: 1995 Lexus  
Record Title: Andrew S. Hanen  
Equitable Title: D. Diane Dillard and Andrew S. Hanen  
Lien: \$0.00  
Approximate Market Value: \$20,000.00

Description: 2001 Chevy Suburban  
Record Title: Andrew S. Hanen  
Equitable Title: D. Diane Dillard and Andrew S. Hanen  
Lien: \$0.00  
Approximate Market Value: \$30,000.00

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**SCHEDULE 4**  
**RETIREMENT ACCOUNTS AND IRAs**

D. Diane Dillard Individual Retirement Account - Chase Securities of Texas (Treasury Strips) (as of 11/30/01)	\$ 156,948.00
D. Diane Dillard Individual Retirement Account -- Merrill Lynch AIM Blue Chip and Value Funds (as of 12/31/01)	18,933.00
D. Diane Dillard -- Chase Retirement Money Market Account (as of 12/31/01)	17.00
Andrew S. Hanen Fidelity Retirement - Fidelity Investments MS I&T Balanced Advisor Funds (as of 12/31/01)	410,478.00
Andrew S. Hanen Individual Retirement Account -- Merrill Lynch AIM Blue Chip and Value Funds (as of 12/31/01)	17,386.00
Andrew S. Hanen ASH SEP Account - Merrill Lynch AIM Blue Chip and Value Funds (approx. as of 12/31/01)	6,233.00
Andrew S. Hanen HAJ&S Retirement Account Guardian MFS Government Security Fund (approx. as of 12/30/01)	<u>82,807.00</u>
TOTAL:	<u>\$ 692,762.00</u>

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AO-18 (w)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
Nomination ReportReport required by the Ethics in  
Government Act of 1976, as amended.  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Hanan, Andrew S.	2. Court or Organization U.S.D.C. - Southern Dist. of Tx.	3. Date of Report 01/23/2002
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (nominee)	5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 12/31/2001
7. Chambers or Office Address 910 Travis, Suite 1700 Houston, Texas 77002	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐ NONE (No reportable positions.)

- |   |  |
|---|--|
| 1. Partner                                | Hanan, Alexander, Johnson & Spalding, L.L.P. |
| 2. Director                               | State Bar of Texas                           |
| 3. Immediate Past President and President | Houston Bar Association                      |

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE

PARTIES AND TERMS

☐ NONE (No reportable agreements.)

- |         |   |
|---------|---|
| 1. 2001 | Andrews & Kurth, L.L.P. Partnership Agreement/Retirement Plan - Withdrawal from former law firm, no control |
| 2. 2000 | Andrews & Kurth, L.L.P. Partnership Agreement/Retirement Plan - withdrawal from former law firm, no control |
| 3.      |   |

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)☐ NONE (No reportable non-investment income.)

- |         |   |              |
|---------|---|--------------|
| 1. 2001 | Hanan, Alexander, Johnson & Spalding, L.L.P.                    | \$741,000.00 |
| 2. 2001 | Andrews & Kurth, L.L.P. - withdrawal benefits                   | \$9,949.00   |
| 3. 2000 | Hanan, Alexander, Johnson & Spalding, L.L.P. - Partnership Draw | \$809,039.00 |
| 4. 2000 | Andrews & Kurth, L.L.P. - withdrawal benefits                   | \$24,934.00  |

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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Hansen, Andrew S.Date of Report  
01/23/2002IV. REIMBURSEMENTS --- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-26 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

## V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

## VI. LIABILITIES

(Includes those to spouse and dependent children. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Southwest Bank of Texas, N.A.	Contingent loan guarantee	K
2	Citibank Mastercard	Credit card	J
3	First U.S.A. Mastercard	credit card	J
4	Merrill Lynch	Cash management account	J
5			
6			

\* VAL CODES: K=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

Date of Report  
01/23/2002

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, sale or interest)	(1) Value Code (J-T)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
Place "X" after each asset exempt from prior disclosure.						(2) Date: Month: Day	(3) Value Code (J-T)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 IRA Account #1-Treasury Strips -Chase Security of Texas	C	Interest	K	T	Exempt				
2 IRA Account #2	A	Dividend	K	T	Exempt				
3 -AIM Blue Chip									
4 -AIM Value Fund									
5 IRA Account #3	A	Dividend	K	T	Exempt				
6 -AIM Blue Chip									
7 -AIM Value Fund									
8 SEP Account #1	A	Dividend	J	T	Exempt				
9 -AIM Blue Chip									
10 -AIM Value Fund									
11 Retirement Account #1-Fidelity MSIFT Balanced Advisor	A	Dividend	N	T	Exempt				
12 Retirement Account #2 - Guardian MPS Government	A	Interest	L	T	Exempt				
13 Retirement Account #3	A	Dividend	L	T	Exempt				
14 -Principal Large Cap Fund									
15 -Principal Large Company Growth Fund									
16 Brokerage Account #1 - 2001									
17 -Texas Pub. Fin. Auth. Municipal Bond	C	Interest	L	T	Exempt				
1 No Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 F2=\$5,000,001 or more	E=\$15,001-\$50,000					
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$50,001-\$1,000,000	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal (Col. C2) Use Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Carb/Market						

Date of Report  
01/23/2002

(includes those of spouse and dependent children. See pp. 3)

A. Description of Assets (including trust assets)		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "X" after each asset exempt from prior disclosures.		(1) Annual Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
							(2) Date: Month Day	(3) Value Code (J-T)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions.)									
18	-Travis County - Municipal Bond	C	Interest	L	T	Exempt				
19	-Texas State Water Dev. Municipal Bonds	D	Interest	L	T	Exempt				
20	-Southlake Texas L/T Water Municipal Bonds	b	Interest	L	T	Exempt				
21	-Georgetown, Texas I.S.D. Municipal Bonds	C	Interest	L	T	Exempt				
22	-Fort Worth, Texas I.S.D. Municipal Bonds	C	Interest	L	T	Exempt				
23	-U.T. Rev. Municipal Bonds	C	Interest		T	Exempt				
24	-Richardson, Texas Municipal Bonds	C	Interest	L	T	Exempt				
25	-Allen, Texas Mfg. Municipal Bonds	C	Interest	L	T	Exempt				
26	Brokerage Account #2 - 2001									
27	-Del Valle, Texas I.S.D. Municipal Bonds	D	Interest	L	T	Exempt				
28	-DeSoto, Texas Y.S.D. Municipal Bonds	C	Interest	L	T	Exempt				
29	-Aldine, Texas I.S.D. Municipal Bonds	D	Interest	L	T	Exempt				
30	-Canadian River Man. Municipal Bonds	D	Interest	M	T	Exempt				
31	-Houston, Texas Wtr. Municipal Bonds	D	Interest	M	T	Exempt				
32	-Brownsville, Texas Municipal Bonds	C	Interest	L	T	Exempt				
33	-Lower Colorado River Authority Municipal Bonds	C	Interest	L	T	Exempt				
34	-Arlington, Texas J.S.D. Municipal Bonds	D	Interest	M	T	Exempt				
1 No Gain Codes: A=\$1,000 or less (Col. B1, D4) P=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 I=\$15,000,001 or more		E=\$15,001-\$50,000		
2 Val Codes: J=\$15,000 or less (Col. C1, D3) Q=\$50,001-\$1,000,000		K=\$15,001-\$50,000 P=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 R=\$50,000,001-\$25,000,000		M=\$100,001-\$250,000 S=\$250,000,001-\$500,000,000		N=\$250,001-\$500,000 P=\$50,000,001 or more		
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market				



Date of Report  
01/23/2002

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
Place "X" after each asset exempt from prior disclosure.									
NONE (No reportable income, assets, or transactions.)									
35 -Harris County Municipal Bonds	D	Interest	M	T	Exempt				
36 -University of North Texas Municipal Bonds	B	Interest	K	T	Exempt				
37 -Aldine, Texas I.S.D. Zero Coupon Municipal Bonds	B	Interest	K	T	Exempt				
38 -Texas AMT Rev. Zero Coupon Municipal Bonds	B	Interest	K	T	Exempt				
39 -Galveston, Texas Pub. Zero Coupon Municipal Bonds	B	Interest	K	T	Exempt				
40 -Houston, Texas, I.S.D. Zero coupon municipal Bonds	B	Interest	K	T	Exempt				
41 -Houston, Texas Wcr. Zero Coupon Municipal Bonds	B	Interest	K	T	Exempt				
42 -Houston, Texas, I.S.D. Zero Coupon Municipal Bonds	B	Interest	K	T	Exempt				
43 -OMA Merrill Lynch Tax-Exempt Money Market	C	Interest	K	T	Exempt				
44 -San Antonio, Texas Elec. Zero Coupon Municipal Bonds	C	Interest			Exempt				
45 -Plano, Tex. F&G. Zero Coupon Municipal Bonds	A	Interest			Exempt				
46 -Wrazoria County, Texas Zero Coupon Municipal Bonds	A	Interest			Exempt				
47 -Conroe, Texas I.S.D. Zero Coupon Municipal Bonds	A	Interest			Exempt				
48 -Plano, Texas I.S.D. Zero Coupon Municipal Bonds	A	Interest			Exempt				
49 -Socorro, Texas I.S.D. Zero coupon Municipal Bonds	A	Interest			Exempt				
50 -Harris Cty, Texas Hosp. Dist. Zero Coupon Municipal	A	Interest			Exempt				
51 -Harris Cty, Texas Woll. Sub. Zero Coupon Municipal	A	Interest			Exempt				
1 net/Gain Codes: W=\$1,000 or less (Col. B, D4) E=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 M=\$15,000,001 or more E=\$15,001-\$50,000									
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$50,001-\$1,000,000 K=\$15,001-\$50,000 P=\$1,000,001-\$5,000,000 L=\$50,001-\$100,000 Q=\$50,000,001-\$25,000,000 M=\$100,001-\$250,000 R=\$25,000,001-\$50,000,000 N=\$250,001-\$500,000 P4=\$50,000,001 or more									
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value R=Cost (real estate only) V=Other S=Assessment W=Estimated T=Cash/Marker									

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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Hanan, Andrew S.Date of Report  
01/29/2002VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month: Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 -Harris Cty, Texas Toll-Sub. Zero Coupon Municipal	A	Interest			Exempt				
53 -Northwest, Texas I.S.D. Zero Coupon Municipal Bonds	A	Interest			Exempt				
54 -Dallas, Texas Civic CCC Zero Coupon Municipal Bonds	A	Interest			Exempt				
55 Brokerage Account #3 - 2001									
56 - Adobe Systems - Stock	A	Dividend			Exempt				
57 - Allergan Inc. - stock	A	Dividend			Exempt				
58 - ALGA Corp. - Stock		None			Exempt				
59 - AOL Time Warner - Stock		None			Exempt				
60 - American Express - Stock	A	Dividend			Exempt				
61 - Analog Devices - Stock		None			Exempt				
62 - BEA Systems - Stock		None			Exempt				
63 - CVS Corp. Del. - Stock	A	Dividend			Exempt				
64 - Cienna Corp. - Stock		None			Exempt				
65 - Check Point Software - Stock	A	Dividend			Exempt				
66 - Cisco Systems		None			Exempt				
67 - Corning, Inc. - Stock	A	Dividend			Exempt				
68 - Dollar Tree - Stock		None			Exempt				

1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 I=\$15,001-\$50,000 or more
2 Val Codes: J=\$15,000 or less (Col. C1, D3) O=\$500,001-\$1,000,000	K=\$15,001-\$50,000 P=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 Q=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 R=\$250,001-\$500,000 N=\$500,001-\$1,000,000 or more
3 Val Mth Codes: Q=Appraisal (Col. C2) U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

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<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Kanan, Andrew S.	Date of Report 01/23/2002

VII. Page 5 INVESTMENTS and TRUSTS-- Income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(3) Date: Month Day	(3) Value Gain Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 - EMC Corp. - Stock					Exempt				
70 - Elan Corp. P.L.C. - Stock		None			Exempt				
71 - Enron Corp. Oregon - Stock	A	Dividend			Exempt				
72 - Freddie Mac - Stock	A	Dividend			Exempt				
73 - Forest Labs - Stock	A	Dividend			Exempt				
74 - Goldman Sachs - stock	A	Dividend			Exempt				
75 - General Electric - Stock	A	Dividend			Exempt				
76 - Harley Davidson - Stock	A	Dividend			Exempt				
77 - Immunex Corp. - Stock		None			Exempt				
78 - Idex Pharm. - Stock	A	Dividend			Exempt				
79 - 12 Technologies - Stock		None			Exempt				
80 - Jupiter Networks - Stock		None			Exempt				
81 - Intel Corp. - Stock	A	Dividend			Exempt				
82 - Kohls Corp. - Stock		None			Exempt				
83 - Lowes Companies - Stock	A	Dividend			Exempt				
84 - Mercury Interactive - Stock		None			Exempt				
85 - Morgan St. Dean Witter - Stock	A	Dividend			Exempt				
1 Inc/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: I=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D5) O=\$500,001-\$1,000,000 P=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessed T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Hansen, Andrew S.Date of Report  
01/23/2002VII. Page 6 INVESTMENTS and TRUSTS -- income, value, transactions  
(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset except from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (I-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions.)									
66 - Merck - Stock	A	Dividend			Exempt				
67 - Network Appliance - Stock		None			Exempt				
68 - Nokia Corp. - Stock		None			Exempt				
69 - Oracle Corp. - Stock		None			Exempt				
90 - Pharmacia Corp. - Stock	A	Dividend			Exempt				
91 - Pfizer - Stock	A	Dividend			Exempt				
92 - Q Logic Corp. - Stock		None			Exempt				
93 - Safeway Inc. - Stock		None			Exempt				
94 - SDL Inc. - Stock		None			Exempt				
95 - Siebel Inc. - Stock		None			Exempt				
96 - Sycamore Networks - Stock		None			Exempt				
97 - Stilwell Financials - Stock	A	Dividend			Exempt				
98 - Sun Microsystems - Stock		None			Exempt				
99 - Texas Instruments - Stock	A	Dividend			Exempt				
100 - Viscon - Stock		None			Exempt				
101 - Wal-Mart - Stock	A	Dividend			Exempt				
102 - Applied Material - Stock		None			Exempt				

1 Tax/Unit Codes: A=\$1,000 or less (Col. B), D4 F=\$50,001-\$100,000		B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 H2=\$5,000,001 or more		E=\$15,001-\$50,000	
2 Val Codes: J=\$15,000 or less (Col. C), D3 O=\$500,001-\$1,000,000		K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more	
3 Val/Unit Codes: Q=Appraisal (Col. C) U=Book Value		V=Cost (real estate only) W=Other		S=Assessment X=Estimated		T=Cash/Market			

Date of Report  
01/23/2002

(Includes those of spouse and dependent children)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
					(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, margin, redemption)
(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)						
Place "X" after each asset exempt from prior disclosure.									
NONE (No reportable income, assets, or transactions.)									
103 - JDS Uniphase - Stock		None			Exempt				
104 - Palm Inc. - Stock		None			Exempt				
105 - Tyco Int. - Stock	A	Dividend			Exempt				
106 - McData Corp. - Stock	A	Dividend			Exempt				
107 - Calpine - Stock		None			Exempt				
108 - Costco - Stock		None			Exempt				
109 - Comcast - Stock		None			Exempt				
110 - Home Depot - Stock	A	Dividend			Exempt				
111 - Paychex - Stock	A	Dividend			Exempt				
112 - Lehman Bros. - Stock	A	Dividend			Exempt				
113 - QWest - Stock	A	Dividend			Exempt				
114 - Sprint - Stock		None			Exempt				
115 - Veritas Software - Stock		None			Exempt				
116 - Broadcast Comm. - Stock		None			Exempt				
117 - Biogen Inc. - Stock		None			Exempt				
118 - Taiwan Manufacturing - Stock	A	Dividend			Exempt				
119 - CMA - Money Market - Provident Account	A	Interest			Exempt				
1 Val Code: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000		C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000		D=\$5,001-\$15,000 I2=\$5,000,001 or more		E=\$15,001-\$50,000		
2 Val Code: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000		L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000		M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000		N=\$250,001-\$500,000 P4=\$50,000,001 or more		
3 Val With Code: Q=Appraisal (Col. C2)	R=Cost (realizable only) V=Other		S=Assessment W=Estimated		T=Cash/Market				

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Name of Person Reporting Hanan, Andrew S.		Date of Report 01/23/2002
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## FINANCIAL DISCLOSURE REPORT

VII. Page 8 INVESTMENTS and TRUSTS-- income, value, transactions (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code (J-N)	(4) Date: Month Day (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
120 Smith Barney Municipal Money Market Account	A	Interest	J	T	Exempt				
121 Chase Vista Funds Money Market Account	A	Interest			Exempt				
122 HHS, L.L.P. Partnership Interest	A	None	M	U	Exempt				
123 Compass Bank Account	A	Interest	J	T	Exempt				
124 Chase Bank	C	Interest	J	T	Exempt				
125									
126									
127									
128									
129									
130									
131									
132									
133									
134									
135									
136									
1 Ino/Gain Codes: A=\$1,000 or less (Col. B1, D4) F=\$50,001-\$100,000 B=\$1,001-\$2,500 G=\$100,001-\$1,000,000 C=\$2,501-\$5,000 H=\$1,000,001-\$5,000,000 D=\$5,001-\$15,000 H2=\$5,000,001 or more E=\$15,001-\$50,000 2 Val Codes: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more 3 Val Mtth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated									

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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Hansen, Andrew S.Date of Report  
01/23/2002

## VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

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## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Hansen, Andrew S.Date of Report  
01/23/2002

## SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

## PART 1. POSITIONS (cont'd.)

Line Position Name of Organization/Entity

4 Director Baylor Alumni Association

## PART 3. NON-INVESTMENT INCOME (cont'd.)

Line Date Source and Type Gross Income

5 1999 Hansen, Alexander, Johnson &amp; Spalding, L.L.P. - Partnership Draw \$629,671.00

6 1999 Andrews &amp; Kurch, L.L.P. - withdrawal benefits \$21,846.00

7 2001 South Texas College of Law - Adjunct Professor

8 2001 Self-employed - lawyer

9 2000 South Texas College of Law - Adjunct Professor

10 2000 Self-employed - lawyer

11 1999 Self-employed - lawyer

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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Hansen, Andrew S.	01/23/2002

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

1/23/02

Note:

Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544



Senator EDWARDS. Terrific. Glad to have all of you. Welcome. Glad to have you here.

Mr. Mays?

**STATEMENT OF SAMUEL H. MAYS, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE**

Mr. MAYS. Mr. Chairman, I am pleased to have my mother with me here today from Memphis, Tennessee, Eloise Mays, who is over to the right.

Senator EDWARDS. Welcome, Ms. Mays. Happy to have you here.

Mr. MAYS. She has asked me not to give her age, but she is younger in spirit than I am.

I am also pleased to have my sister, Melissa Robinson, here from Memphis, and her husband, Cooper Robinson.

[The biographical information of Mr. Mays follows:]

QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
Samuel Hardwicke Mays, Jr., also known as Hardy Mays
2. **Position:** State the position for which you have been nominated.  
  
Judge of the United States District Court for the Western District of Tennessee
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Baker, Donelson, Bearman & Caldwell  
165 Madison Avenue  
Suite 2000  
Memphis, Tennessee 38103  
(901) 577-2259
4. **Birthplace:** State date and place of birth.  
  
January 1, 1948  
Memphis, Tennessee
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
I have never been married. I have no children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
  

Yale University School of Law	1970-1973	J.D.	1973
Amherst College	1966-1970	B.A.	1970
7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

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Listed below are entities where I was a full-time employee.

02/00 to Present	Baker, Donelson, Bearman & Caldwell 165 Madison Avenue Suite 2000 Memphis, Tennessee 38103	Shareholder
01/97 to 02/00	State of Tennessee State Capitol First Floor Nashville, Tennessee 37243	Deputy to the Governor and Chief of Staff
01/95 to 01/97	State of Tennessee State Capitol First Floor Nashville, Tennessee 37243	Legal Counsel to the Governor
02/79 to 01/95	Heiskell, Donelson, Bearman, Adams, Williams & Kirsch 165 Madison Avenue Suite 2000 Memphis, Tennessee 38103	Shareholder
10/73 to 02/79	Heiskell, Donelson, Adams, Williams & Kirsch 165 Madison Avenue Suite 2000 Memphis, Tennessee 38103	Associate
06/73 to 10/73	Heiskell, Donelson, Adams, Williams & Wall 165 Madison Avenue Suite 2000 Memphis, Tennessee 38103	Contract Employee
06/72 to 09/72	Breed, Abbott & Morgan One Chase Manhattan Plaza New York, New York 10005 (This firm no longer exists.)	Summer Associate
06/71 to 09/71	Judge Wm. H.D. Fones 494 Brighton Place Memphis, Tennessee 38117	Volunteer Summer Law Clerk

Listed below are non-profit entities with which I am or have been affiliated as a volunteer officer or director. By the designation "c.", I have indicated that the dates are approximate.

07/00 to Present	Memphis Botanic Garden 750 Cherry Road Memphis, Tennessee 38117	Volunteer Board Member
07/00 to Present	Memphis Orchestral Society 3100 Walnut Grove Road Suite 501 Memphis, Tennessee 38111	Volunteer Board Member
c. 1985 to 01/95	Opera Memphis 4821 American Way Memphis, Tennessee 38118	Volunteer Board Member
c. 1985 to c. 1988	Playhouse on the Square 51 South Cooper Street Memphis, Tennessee 38104	Volunteer Board Member
1985 to 1987	Memphis Bar Association One Commerce Square Memphis, Tennessee	Volunteer Board Member
c. 1980 to c. 1986	Transitional Center, Inc. (This organization no longer exists.)	Volunteer Board Member
c. 1981 to c. 1984	Solisti New York New York City	Volunteer Board Member
c. 1974 to c. 1984	Ballet Society of Memphis, Inc. (This organization no longer exists.)	Volunteer Board Member President (1977-79)
c. 1979 to c. 1983	Memphis Brooks Museum of Art Foundation Overton Park Memphis, Tennessee	Volunteer Board Member
c. 1980 to c. 1982	Decorative Arts Trust Overton Park Memphis, Tennessee	Volunteer Board Member

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

None.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Fellow	American Bar Foundation
Good Guy Award	Memphis Women's Political Caucus 1995
Hero of Public Service	Memphis Bar Association 2000
Eagle Scout	1961

I was graduated with honors from Amherst College in 1970 and was a member of the Board of Editors of the Yale Law Journal during 1972 - 1973.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association	
Health Law Section	
Section of Administrative Law	
and Regulatory Practice	
Section of Business Law	
Tennessee Bar Association	
Memphis Bar Association	Board of Directors 1985-1987
American Bar Foundation	
American Judicature Society	

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Tennessee Bar - 1973  
 United States District Court for the Western District of Tennessee - 1974  
 Shelby County Circuit Court - 1973  
 Shelby County Chancery Court - 1973

12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am presently a board member of the Memphis Orchestral Society (Memphis Symphony Orchestra) and the Memphis Botanic Garden, both of which are nonprofit corporations.

I am also a member of the following organizations:

Metropolitan Opera Guild (New York City)  
 Plaza Club (Memphis, TN)  
 Yale Club of New York City  
 Yale Club of Memphis  
 Republican National Lawyers Association  
 Metropolitan Museum of Art (New York City)  
 Christ United Methodist Church (Memphis, TN)

I have been a member or served as an officer and/or director of the following nonprofit or political organizations, all located in Memphis, Tennessee, unless otherwise indicated:

Yale Law Journal (New Haven, CT) - Member, Board of Editors  
 Opera Memphis - Board of Trust  
 Ballet Society of Memphis, Inc. - President; Board of Directors  
 Memphis Brooks Museum of Art Foundation - Board of Directors  
 Decorative Arts Trust - Board of Directors  
 Playhouse on the Square - Board of Directors  
 Transitional Center, Inc. - Board of Directors  
 Solisti New York (New York City) - Board of Directors  
 Shelby County Republican Party - Finance Chair; Steering Committee  
 Tennessee Republican Party (Nashville, TN) - Co-chair; State Executive Committee  
 Metropolitan Opera National Council (New York City)  
 National Urban League - Memphis Chapter  
 Commitment Memphis

I belong to the University Club of Memphis. Although the University Club has never had any legal provision or policy prohibiting the admission of African-American members, for a number of years after my admission it had no African-American members. The club has since admitted and continues to have African-American members. I helped to identify and to sponsor the first African-American member.

The Charter and By-Laws of the University Club formerly limited certificate-holding (voting) memberships to men. Widows and daughters of members held non-voting memberships. The Charter and By-Laws were amended by a two-thirds vote of the membership to permit women to become full, certificate-holding members. Today, the University Club has a number of women members and a written nondiscrimination policy. I advocated and voted in favor of the amendments.

Until about 1995, I was a member of the Kiwanis Club of Memphis, an affiliate of Kiwanis International. During the initial years of my membership, the club had no women members. That practice changed during my membership, and the club began admitting women on a nondiscriminatory basis. I supported the membership change.

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

None. On occasion, when I worked in state government, I read speeches written for the Governor or delivered my own speeches without a written text. I have not retained any notes from the latter.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before a committee or subcommittee of the Congress.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

The present state of my health is good. My last full physical examination was May 10, 2001.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written;
- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court; and
- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions.

If any of the opinions or rulings listed were in state court or were not officially reported, please provide copies of the opinions.

I have never been a judge.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

From January, 1995 until January, 1997 I served as Legal Counsel to the Governor of Tennessee. From January, 1997 until February, 2000 I served as Deputy to the Governor and Chief of Staff. I was appointed to both of these positions by the Governor, Don Sundquist. As Counsel to the Governor, I served as a member of the Tennessee Board of Equalization from 1995 until 1997. I served as a member of the Tennessee Health Facilities Commission from 1986 until 1988 by appointment of Governor Lamar Alexander. I have never run unsuccessfully for elective office or been nominated for appointed office and not confirmed.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was elected to the Executive Committee of the Tennessee Republican Party and served there from 1986 until 1990.

I was elected a delegate to the Republican National Convention in 2000.

I was campaign manager or co-manager of the following campaigns:

Leonard Dunavant	Tennessee State Senate	1992
Jayne S. Creson	Shelby County Clerk	1994
Bill Gibbons	Shelby County Commission	1994
George H. Brown, Jr.	Circuit Court Judge	1984, 1990
Robert L. Childers	Circuit Court Judge	1984, 1990
Bill Gibbons	Mayor of Memphis	1987
Bill Gibbons	Memphis City Council	1983
Nancy Sorak	Memphis City Court Judge	1991

I served on the Tennessee campaign committees of the following campaigns:

George H. W. Bush	President of the United States	1988, 1992
Winfield Dunn	Governor of Tennessee	1986
Don Sundquist	Governor of Tennessee	1994, 1998
Karen Williams	Tennessee Public Service Commission	1994



I was Tennessee chair or co-chair of lawyers' committees for the following campaigns:

George H. W. Bush	President of the United States	1988, 1992
George W. Bush	President of the United States	2000

I was West Tennessee campaign co-chair for the following candidate:

Bill Frist	United States Senate	2000
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I served as finance chair for the following candidate:

Curtis Person	Tennessee State Senate	1994
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I served on Shelby County, Tennessee, campaign committees and was active in the campaigns of the following candidates:

Ronald Reagan	President of the United States	1980, 1984
Bob Dole	President of the United States	1996
Howard H. Baker, Jr.	United States Senate	1978
Victor Ashe	United States Senate	1984
Bill Andersen	United States Senate	1988
Fred Thompson	United States Senate	1994
Bob Corker	United States Senate	1994
Bill Frist	United States Senate	1994
Lamar Alexander	Governor of Tennessee	1974, 1978, 1982
Odell Horton	Shelby County Attorney General	1974
Jim Rout	Shelby County Mayor	1994
Bob Patterson	Shelby County Trustee	1990
Janice Holder	Circuit Court Judge	1990
Julia S. Gibbons	Circuit Court Judge	1982
George T. Lewis, Jr.	Chancellor	1982, 1990
Phyllis Gardner	Criminal Court Judge	2000
Ann L. Pugh	General Sessions Court Judge	1990
Bob Dunavant	Probate Court Clerk	1990
Thomas Long	Shelby County Register	1986

I served on district or city campaign committees for the following candidates:

Don Sundquist	United States Congress	1982, 1984, 1986, 1988, 1990, 1992
Maida S. Pearson	United States Congress	1994
Ed Bryant	United States Congress	1994, 2000
Karen Williams	Tennessee House of Representatives	1982, 1984, 1986, 1988, 1990, 1992

Charles Burson	Shelby County Commission	1978
W. Otis Higgs	Mayor of Memphis	1975
Mike Cody	Mayor of Memphis	1982
Bob James	Memphis City Council	1987
Jerome Rubin	Memphis City Council	1991
Andy Alissandratos	Memphis City Council	1991
Sara Kyle	Memphis City Court Judge	1991

I served on the finance committees of the following campaigns:

Don Sundquist	United States Congress	1982, 1984, 1986, 1988, 1990, 1992
Maida S. Pearson	United States Congress	1994
Lamar Alexander	Governor of Tennessee	1982
Don Sundquist	Governor of Tennessee	1994
Odell Horton	Shelby County Attorney General	1974

I was a volunteer in all of the campaigns listed above.

No complaint has been lodged against me or, to the best of my knowledge, against any political committee with which I have been associated with the Federal Election Commission or any state or local election authorities.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I did not serve as a traditional clerk to a judge. I did work in the summer of 1971 as a volunteer law clerk for Justice Wm. H.D. Fones, who was then a Circuit Judge in Shelby County, Tennessee, and who subsequently became Chief Justice of the Tennessee Supreme Court.

- (2) whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

In 1973 I became an associate with the law firm of Heiskell, Donelson, Adams, Williams & Wall, a predecessor of the firm now known as Baker, Donelson, Bearman & Caldwell, 165 Madison Avenue, Suite 2000, Memphis, Tennessee 38103. I became a partner in that firm in 1979 and continued to practice there until I joined state government in January, 1995. From then until February 1, 2000, I served on the staff of Governor Don Sundquist, State Capitol, Nashville, Tennessee 37219. I was the Governor's Legal Counsel from 1995 until 1997. I was Deputy to the Governor and Chief of Staff from January 1997 until February 1, 2000. On February 1, 2000, I rejoined Baker, Donelson, Bearman & Caldwell and have continued to practice with that firm.

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I began the practice of law in 1973 as an associate with a twenty-two lawyer firm in Memphis, Tennessee, engaged in the general practice of law. I was a tax and corporate practitioner, representing small and family-owned businesses and individuals in handling their day-to-day problems. I represented various clients in criminal and civil tax fraud matters, and I represented a national bank in its routine banking transactions.

In 1974 my practice shifted to general litigation in federal and state trial courts. I tried cases in the United States District Court for the Western District of Tennessee, the United States Bankruptcy Court, the Circuit, Chancery, Probate, General Sessions, and Juvenile Courts of Tennessee, and the city courts of Memphis and Germantown, Tennessee. I represented a national bus line, a national airline, a national bank and its holding company, an oil distributor, various estates and trusts, bankruptcy claimants, and both plaintiffs and defendants in personal injury litigation. Most matters I handled were commercial or business disputes. I continued to focus on trial work until about 1978, and I continued to try cases until 1985.

In 1978 the focus of my practice shifted to banking law. I represented various banks, but most of my work was done for one regional national bank. I specialized in interest and usury matters, trust department regulation, discount brokerage, consumer credit issues, and loan workouts.

From 1985 to 1988 I was the managing partner of the Heiskell, Donelson law firm. I was the chief executive officer of a medium-sized firm, which had about 80 lawyers and 84 non-legal employees. I was responsible for all business aspects of the practice, including strategic planning, and for quality control and oversight of the individual practitioners in the firm. I developed a plan for a regional law firm and opened offices in Nashville and Chattanooga, Tennessee. I continued the practice of banking law during this period, but I no longer handled litigation matters.

From 1988 until 1995, I practiced health law. That practice included regulatory issues such as licensure, compliance, certificates of need, Medicaid reimbursement, tax exemptions, and transactional matters, including bond issues, lending, and related real estate and zoning matters. I did some legislative lobbying on behalf of healthcare clients during this period and represented healthcare clients before state boards and commissions in informal proceedings and in hearings under the Tennessee Administrative Procedure Act. I also handled some corporate debt restructures and loan workouts. My clients included a major national hospital chain and providers of intermediate care for citizens with mental retardation.

From 1995 until 1997, I was legal counsel to the Governor of Tennessee. I represented him in his capacity as Governor. My duties included:

- (1) review and recommendation as to all legislation requiring the Governor's approval or disapproval;
- (2) review of all documents requiring the Governor's signature;
- (3) preparation of executive orders;
- (4) responsibility for all clemency matters and extraditions;
- (5) acting as gubernatorial liaison to the court system;
- (6) advising the Governor on all matters of judicial administration;
- (7) supervising on behalf of the Governor all litigation to which the state of Tennessee was a party, including major matters in federal courts challenging the constitutionality of conditions in state institutions;
- (8) approval of all judicial settlements;

- (9) reviewing and recommending all judicial appointees;
- (10) serving on the state Board of Equalization;
- (11) ultimate supervisory responsibility for all attorneys in the executive branch of state government.

From 1997 until February 1, 2000, I served as Deputy to the Governor and Chief of Staff to the Governor of Tennessee. In that capacity I was the chief operating officer of a state with annual revenues of about \$19 billion a year. The Governor's cabinet and staff reported to me. I also maintained ultimate cabinet-level responsibility during that period for all legal matters affecting the executive branch of state government.

Since February 1, 2000, I have practiced administrative law and public policy. I have appeared before administrative boards and commissions. I advise clients and assist them in developing strategies for dealing with the executive and legislative branches of government and with various public bodies. I have also acted as a lobbyist for various individuals and entities dealing with the executive and legislative branches of Tennessee government. Most of my clients continue to be healthcare entities.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

From 1974 through 1978, I appeared in court frequently. From 1973 through 1974 and from 1978 through 1985, I appeared in court occasionally. Since 1985 I have not appeared in court at all.

- (2) Indicate the percentage of these appearances in

- (A) federal courts;

approximately 25%

- (B) state courts of record;

approximately 50%

- (C) other courts.

approximately 25%

(3) Indicate the percentage of these appearances in:

(A) civil proceedings;

100%

(B) criminal proceedings.

0%

(4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

I would estimate that I tried between twenty-five and thirty cases to verdict or judgment in courts of record. In approximately half of these cases, I served as sole counsel. In the remainder I was associate counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

approximately 10%

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

None

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

As an associate, I was required by my law firm to devote a minimum of one hundred hours each year to pro bono services. Since then, I have attempted to devote a minimum of one hundred hours each year to pro bono efforts. Most of my work has been for non-profit entities in the visual and performing arts. I have prepared corporate documents and tax exemptions, done general corporate work, given general legal advice, handled business disputes, and performed various contracting and employment related functions. I have represented a ballet company and various dance companies, a symphony orchestra, an opera company, a theater group, an art museum, and many other non-profit organizations. I also represented the Transitional Center in Memphis, a halfway house for prisoners.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:

- (a) the citations, if the cases were reported, and the docket number and date if unreported;
- (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
- (c) the party or parties whom you represented; and
- (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

(1) Reese Enterprises, Inc. v. Dixie Oil of Tennessee, Inc. v. Jerry Neisler, individually and d/b/a Neisler's Hi-40 Truck Center and Neisler Oil Co., No. C-74-552 in the United States District Court for the Western District of Tennessee, Judge Bailey Brown. The complaint in this matter was filed on October 29, 1974. I was sole counsel for plaintiff Reese Enterprises. William D. Treeby represented Dixie Oil. Franklin Murchison represented the defendant Neisler. The action sought reimbursement for diesel fuel appropriated by defendant Neisler without payment. The basic legal issues included agency, estoppel, the statute of frauds, and contract issues involving the sale of goods under Article 2 of the Uniform Commercial Code. I prepared the complaint, handled all discovery, and prepared and tried the matter before a jury. The jury returned a verdict on behalf of plaintiff Reese and third-party plaintiff Dixie against defendant Neisler. The court entered judgment in the amount of \$205,860.40, including \$25,000.00 in punitive damages, on October 30, 1975.

William D. Treeby  
 Stone, Pigman, Walther,  
 Whittmann & Hutchinson, L.L.P.  
 546 Carondelet Street  
 New Orleans, LA 70130-3588  
 (504) 581-3200

The Honorable Franklin Murchison  
 515 Liberty Street  
 Jackson, TN 38301

(731) 423-6066

(2) Estate of Celia C. Motley, Deceased, No. 99777 in the Probate Court of Shelby County, Tennessee, Judge Harry C. Pierotti. Two contested claims were filed against this estate and tried in the Probate Court of Shelby County, Tennessee.

(a) The claim of C. C. Calcutt in the amount of \$131,974.73 was filed on December 19, 1973. Mr. Calcutt, decedent's brother, maintained that decedent owed him funds from the estate of their father. The legal issues involved the statute of limitations and the doctrine of laches, the law of constructive trust, and the statute of frauds. Wm. F. Kirsch, Jr., who is deceased, was lead counsel for First National Bank of Memphis, the Executor of the estate, and I acted as associate counsel. Barret Ashley represented the claimant. I developed the facts for a period dating back some forty years, assisted with the trial briefs, and prepared for and participated in the hearing on behalf of the Executor. After the evidentiary hearing, the court entered an order on July 8, 1974, dismissing the claim.

Barret Ashley  
Ashley, Ashley & Arnold  
322 Church Avenue  
P. O. Box H  
Dyersburg, TN 38024  
(731) 285-5074

(b) Decedent's nephew Harry Calcutt filed two claims against the estate on December 27, 1973, aggregating \$138,440.04. Wm. F. Kirsch, Jr., deceased, was chief counsel for the Executor, and I was associate counsel. James M. Manire represented the claimant. Claimant maintained that he was entitled to property of the estate on theories of constructive trust and express, oral trust. The legal issues included both those set forth under the claim of C.C. Calcutt and release and consideration, the equitable doctrine of unclean hands, and oral trust. I prepared various memoranda before the hearing, developed the facts, and prepared for and participated in the hearing on the claim. I also wrote the appellate briefs. The trial court partially allowed one of the claims on March 11, 1975. That decision was reversed and both claims dismissed by the Tennessee Court of Appeals in a decision found at 544 S.W. 2d 622 (Tenn. Ct. App. 1976). The Tennessee Supreme Court denied certiorari on August 16, 1976.

James M. Manire



Glankler Brown, PLLC  
Suite 1700  
One Commerce Square  
Memphis, TN 38103  
(901) 525-1322

(3) Christian Lewis Brockschmidt v. Greyhound Lines, Inc., No. 64200-1 in the Circuit Court of Shelby County, Tennessee, Judge John R. McCarroll, Jr. The complaint was filed on May 10, 1974. Jack V. Delany represented the plaintiff. Wm. F. Kirsch, Jr., deceased, was lead counsel for defendant, and I was associate counsel. The complaint sought \$100,000.00 in general damages and \$50,000.00 in punitive damages against Greyhound for an assault on the plaintiff in the Greyhound bus terminal in Memphis, Tennessee. Plaintiff alleged that Greyhound had been negligent in failing to protect him and failing to provide safe premises. I did research in this matter, prepared it for trial, and participated in the jury selection and trial of the case. The court directed a verdict in favor of the defendant at the conclusion of plaintiff's proof on the ground that a common carrier owes no duty to a passenger unless the common carrier knows or has reason to know that deleterious acts are occurring or about to occur on the common carrier's premises. Judgment on the verdict was entered on December 3, 1975. This was the first application of the limited premises liability doctrine to common carriers in Tennessee.

Jack V. Delany  
668 Poplar Avenue  
Memphis, TN 38105  
(901) 525-1900

(4) Jordan International Co. v. Piper Industries, No. C-74-597 in the United States District Court for the Western District of Tennessee, Judge Harry W. Wellford. The complaint was filed in 1974. John C. Speer acted as lead trial counsel for the plaintiff, and I was associate counsel. Charles M. Crump acted as counsel for the defendant. This was an action for damages arising from a breach of contract to purchase 640 tons of rolled steel coils. The original purchase price was \$272,217.45. The legal issues included agency, damages, and the commercial reasonableness of a resale under the Uniform Commercial Code. I participated in the non-jury trial in 1976. In a memorandum opinion dated September 24, 1976, the court found the resale was commercially reasonable, and judgment was entered for the plaintiff. This matter was appealed to the Sixth Circuit, but settled before briefing and argument.

John C. Speer  
Baker, Donelson, Bearman & Caldwell  
165 Madison Avenue  
Suite 2000  
Memphis, TN 38103  
(901) 526-2000

Charles M. Crump  
Apperson, Crump & Maxwell, PLC  
First Floor  
1755 Kirby Parkway  
Memphis, TN 38120-4399  
(901) 756-6300

(5) Earl F. Watts v. James R. Schaubert, Valley Steel Products Co., and Valley Industries, Inc., No. 62872-7 in the Circuit Court of Shelby County, Tennessee, Judge Howard J. Vorder Bruegge. The complaint was filed on January 24, 1974. Wm. F. Kirsch, Jr., deceased, was lead counsel for the plaintiff Earl Watts, and I acted as associate counsel. Timothy A. Ryan was counsel for defendants. This was an action for personal injury. Plaintiff was a bus driver who suffered fractures of the spine and neck when his bus struck the rear wheels of defendant's vehicle on a highway in Illinois. The court applied Illinois law. Legal issues included the scope of evidence and mitigation of damages. I participated in the investigation of the case, wrote the pretrial memorandum of law, prepared witnesses and jury instructions, and participated in jury selection and the trial of the case. The jury returned a plaintiff's verdict of \$150,000.00, the largest to that date in Shelby County in 1976. Judge Vorder Bruegge commended all counsel for the excellence of the trial.

Timothy A. Ryan  
Lucas, Thompson, Ryan & Sossaman  
Suite 3002  
100 North Main Street  
Memphis, TN 38103  
(901) 523-1869

(6) Charles Clark v. Greyhound Lines, Inc., No. 66914 T. D. in the Circuit Court of Shelby County, Tennessee, Judge James M. Tharpe. This matter was filed on January 1, 1975. I. H. Murphy was counsel for plaintiff Clark. I was sole counsel for defendant Greyhound. The case arose from an automobile accident involving property damage to a truck that collided with a Greyhound service vehicle. I handled all pretrial motions and legal research and

prepared and tried the case to the court. The court awarded a judgment against Greyhound in the amount of \$2,360.00. I have included this case because it is typical of many I tried alone during this period.

I. H. Murphy  
3290 McCorkle Road  
Memphis, TN 38116  
(901) 332-6600

(7) Alvin C. Crenshaw v. First Tennessee Bank, No. 83852-1 in the Chancery Court of Shelby County, Tennessee, Chancellor Robert M. Hoffman. The complaint was filed on August 31, 1977. Asa H. Hoke, deceased, represented the plaintiff Crenshaw. Wm. F. Kirsch, Jr., deceased, was lead counsel for the defendant Bank, and I was associate counsel. This was a usury class action against a national bank. Plaintiff sought to represent some 25,000 borrowers on bank installment loan contracts. The statute on which the bank had relied in making its loans had been held unconstitutional by the Tennessee Supreme Court. The issues included the appropriate interest rates under Tennessee usury law, the application of 12 U. S. C. §§ 85 and 86, the retroactive effect of court decisions, the appropriateness of class relief, and the adequacy of class representation. I prepared the facts, researched and wrote memorandum briefs in support of the defendant bank's motion to dismiss, and participated on behalf of the bank at the evidentiary hearing on that motion. The Chancellor treated the motion as one for summary judgment and granted it on December 15, 1978. I wrote the memorandum briefs in the Court of Appeals, which affirmed the Chancellor on February 1, 1980.

(8) Thomas N. Bagley, et al. v. State Farm Mutual Automobile Insurance Co., et al., No. 82399-2 in the Chancery Court of Shelby County, Tennessee, Chancellor Wil V. Doran. The complaint was filed on May 24, 1976. Thomas R. Prewitt represented the plaintiffs. Lewis R. Donelson was lead counsel for defendant State Farm, and I acted as associate counsel. John S. Porter, deceased, represented plaintiffs' law firm on a motion to disqualify. Henry Klein represented the Receiver, who was appointed on June 7, 1976. The individual plaintiffs composed the general partner of a development known as Nonconnah Corporate Center. State Farm was a limited partner. The development was a 200,000 square foot office park with an aggregate capital investment of about \$20 million. The complaint sought dissolution of the partnership, the appointment of a receiver, and damages of \$4 million. I participated in the development of the facts and the initial hearings in the matter. On behalf of State Farm,

my firm filed a motion to disqualify plaintiffs' law firm. The court denied the motion to disqualify on February 3, 1977, and State Farm appealed. I wrote the appellate briefs. Ultimately the matter became moot with the resolution of the underlying litigation, and the appeal was dismissed on March 6, 1978.

The Receiver then requested a fee of \$210,000.00. State Farm objected. I briefed the matter and participated in the evidentiary hearing. The Chancellor modified the fee request. I wrote all of the appellate briefs in the Court of Appeals and the Supreme Court, both of which affirmed the Chancellor. The ultimate fee was fixed at \$140,000.00.

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Baker, Donelson, Bearman & Caldwell  
165 Madison Avenue  
Suite 2000  
Memphis, TN 38103  
(901) 526-2000

Thomas R. Prewitt  
Armstrong Allen, PLLC  
Brinkley Plaza, Suite 700  
80 Monroe Avenue  
Memphis, TN 38103-2467  
(901) 523-8211

Henry L. Klein  
Apperson, Crump & Maxwell, PLC  
First Floor  
1755 Kirby Parkway  
Memphis, TN 38120-4399  
(901) 756-6300

(9) Thomas N. Walters v. First Tennessee Bank, No. C-74-267 in the United States District Court for the Western District of Tennessee, Judge Robert M. McRae, Jr. The complaint was filed on May 3, 1974. Wm. Roberts Wilson, Jr. of Pascagoula, Mississippi, was lead counsel for plaintiff. Wm. F. Kirsch, Jr., deceased, was lead counsel for the defendant Bank, and I acted as associate counsel. Plaintiff sought class relief for alleged usurious charges on credit cards issued by defendant Bank. The proposed class included approximately 298,000 card holders in all fifty states, Puerto Rico, the Virgin Islands and several foreign countries. The principal legal issues were jurisdiction, appropriate interest rates under state law and 12 U.S.C.

§§ 85 and 86, and the appropriateness of class relief. I prepared the answers to the complaint and to the amended complaint, represented the defendant Bank at various preliminary hearings and evidentiary hearings and researched and wrote memorandum briefs supporting motions to deny class action status and for summary judgment. The court denied class action status on April 3, 1980, on the ground that the action was unmanageable. On June 12, 1985, the court granted a motion for summary judgment on Walters' individual claim because the Bank had not violated the usury laws of Mississippi or Tennessee.

Wm. Roberts Wilson, Jr.  
4465 I-55 North  
Jackson, MS  
(601) 948-1111

(10) A. S. Hart, et al. v. First National Bank of Memphis, et al., No. 82063-3 in the Chancery Court of Shelby County, Tennessee, Chancellor William Inman, sitting by designation. The complaint was filed on February 11, 1976. J. N. Raines was lead counsel for the plaintiffs. Leo Bearman, Jr. and Wm. F. Kirsch, Jr., deceased, were lead counsel for defendant Bank, and I acted as associate counsel. James S. Cox was counsel for the Bank's co-defendants. The dispute arose from the alleged sale of subordinated debentures by the Bank to Hart. The Bank later sold the debentures at public sale to the Bank's co-defendants. The complaint sought damages of \$1,500,000.00, including treble damages. The principal issues, aside from the theory of damages, were the apparent authority of an agent and the authority of a lawyer to bind his client. I took the lead during the discovery phase of the litigation, taking some depositions, preparing answers to interrogatories, and briefing and arguing all pretrial motions. I was responsible for developing the facts, wrote the brief in support of the Bank's motion to dismiss, and participated in the trial of the cause on behalf of the Bank. The court granted the Bank's motion to dismiss at the close of the plaintiffs' proof on the ground that the Bank's attorney had never had authority to act on behalf of the Bank. Judgment was entered on August 3, 1983. I wrote all briefs in the Court of Appeals and the Supreme Court. The Court of Appeals affirmed the Chancellor at 690 S. W. 2d 536 (Tenn. Ct. App. 1985), and permission to appeal was denied by the Tennessee Supreme Court on May 13, 1985.

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Glankler Brown, PLLC  
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(901) 525-1322

Leo Bearman, Jr.  
Baker, Donelson, Bearman & Caldwell  
165 Madison Avenue  
Suite 2000  
Memphis, TN 38103  
(901) 526-2000

James S. Cox  
8101 Dogwood Road  
Germantown, TN 38139  
(901) 754-3884

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

Neither I nor any business of which I was an officer has been a party or otherwise involved as a party in any civil or administrative proceeding within the last ten years.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will comply with Federal statutes and the Code of Conduct of United States Judges governing conflicts. The only areas of potential conflict for me would be prior employment, former clients, and personal financial interests. I have not been employed by the State of Tennessee since January 31, 2000. I will terminate my entire interest in

my present law firm, Baker, Donelson, Bearman & Caldwell, before taking the bench. Recusals involving significant clients I have represented should not include more than twenty individuals or entities. I would not expect conflicts of interest in any particular category of litigation. I do not anticipate any significant recusals based on my current financial arrangements.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not intend to pursue any outside employment, with or without compensation, during my service with the Court.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

Attached is my Financial Disclosure Report dated January 25, 2002.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

I have completed and attached the financial net worth statement.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

No.

- (a) If so, did it recommend your nomination?

Not applicable.

- (b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

I was recommended for the present vacancy on the District Bench in West Tennessee by the two United States Senators from Tennessee, Fred Thompson and Bill Frist, and by the Governor of Tennessee, Don Sundquist. I was interviewed at the White House by Alberto R. Gonzales, Counsel to the President, and I completed the appropriate forms on which nomination is predicated. I was interviewed subsequently by the Federal Bureau of

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Investigation and by Michael Elston, representing the Department of Justice.

- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

No.



1201

**FINANCIAL STATEMENT  
NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	\$ 42,172	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule 1	4,378	Notes payable to relatives	
Unlisted securities-add schedule 2	8,775	Notes payable to others	
Accounts and notes receivable:		Accounts and bills due - current	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule 4	\$ 52,977
Real estate owned-add schedule 3	128,200	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property			
Cash value-life insurance			
Other assets itemize:			
IRA - Equitable No. 1*	129,381		
IRA - Equitable No. 2*	56,671		
Club Membership	3,250	Total liabilities	52,977
		Net Worth	319,850
Total Assets	\$ 372,827	Total liabilities and net worth	\$ 372,827
CONTINGENT LIABILITIES	None	GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	NO
On leases or contracts		Are you defendant in any suits or legal actions?	NO
Legal Claims		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax			
Other special debt			

\*Current value. Distributions will be subject to tax as ordinary income.

Financial Statement  
Schedule 1

Listed Securities

Verizon	39 shares of common stock @ 47.83	\$1,865.37
MetLife	83 shares of common stock @ 30.27	\$2,512.41

Financial Statement  
Schedule 2

Unlisted Securities

I own 90 shares of Bradner Central Company common stock. The Board of Directors has approved repurchases of company shares at \$97.50 per share.

Financial Statement  
Schedule 3

Real Estate Owned

I own a town home in Memphis, Tennessee. The current appraisal of that property by the Shelby County Assessor of Property is \$128,200.00.

Financial Statement  
Schedule 4

Real Estate Mortgages

The mortgage on my home in Memphis, Tennessee, is held by Homeside Lending, Inc. of Jacksonville, Florida. My last notice stated a principal balance of \$52,977.00.

AO-19 (w)  
Rev. 1/2000

# FINANCIAL DISCLOSURE REPORT

## Nomination Report

Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial) Mays, Jr., Samuel H.	2. Court or Organization U.S. District Court, W.D. TN	3. Date of Report 01/25/2002
4. Title (Article II judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee	5. Report Type (check type) X Nomination, Date 01/23/2002 Initial Annual Final	6. Reporting Period 01/01/2001 to 01/01/2002
7. Chambers or Office Address 165 Madison Avenue Suite 2000 Memphis, TN 38103	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts,  
checking the NONE box for each section where you have no reportable information. Sign on the last page.

### I. POSITIONS (Reporting individual only; see pp. 9-13 of instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Attorney/Shareholder/Employee	Baker, Donelson, Bearman & Caldwell
2 Director	Memphis Orchestral Society
3 Director	Memphis Botanic Garden

### II. AGREEMENTS (Reporting individual only; see pp. 14-16 of instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2000	State of Tennessee Consolidated Retirement System - vested in former employer's retirement plan, no control
2	
3	

### III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2001	Baker, Donelson, Bearman & Caldwell (law firm - shareholder/employee)	\$281,417.00
2 2001	Wellmont Health System (compensation for professional services)	\$7,500.00
3 2000	State of Tennessee (employee)	\$15,037.00
4 2000	Baker, Donelson, Bearman & Caldwell (law firm - shareholder/employee)	\$139,333.00

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Mays, Jr., Samuel H.	01/25/2002

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

POSITION

NAME OF ORGANIZATION / ENTITY

4. Deputy to the Governor and Chief of Staff

State of Tennessee

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Mays, Jr., Samuel H.Date of Report  
01/25/2002

## IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)

☐ NONE (No such reportable reimbursements.)

SOURCE DESCRIPTION

1 EXEMPT

2		
3		
4		
5		
6		
7		

## V. GIFTS

(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)

☐ NONE (No such reportable gifts.)

SOURCE DESCRIPTION VALUE

1 EXEMPT

2			
3			

## VI. LIABILITIES

(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)

☐ NONE (No reportable liabilities.)

CREDITOR DESCRIPTION VALUE CODE\*

1	First Tennessee Bank	Credit Card	J
2	MBNA America Bank	Credit Card	J
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more



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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Mays, Jr., Samuel H.	Date of Report 01/25/2002
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

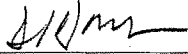
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting Mays, Jr., Samuel H.	Date of Report 01/25/2002
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IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

01/25/02

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

Senator EDWARDS. Welcome. Glad to have you all here.  
Judge Rose?

**STATEMENT OF THOMAS M. ROSE, NOMINEE TO BE DISTRICT  
JUDGE FOR THE SOUTHERN DISTRICT OF OHIO**

Judge ROSE. Thank you, Mr. Chairman. I would just like to introduce my wife, Sandra Rose; my daughter, Traci Rose, who is now an architect in Texas, and I am not sure that she is here to see me or the three candidates from Texas, but I think she is here to see me; my sister and brother-in-law, Ned and Laura Hinton; my good friends, Brenda and Ron Lewis; and my good friend and clerk, Robert Berger.

[The biographical information of Judge Rose follows:]



QUESTIONNAIRE FOR NOMINEES BEFORE THE COMMITTEE ON THE JUDICIARY,  
UNITED STATES SENATE

1. **Name:** Full name (include any former names used).  
  
**Thomas Michael Rose**
2. **Position:** State the position for which you have been nominated.  
  
**Judge, United States District Court, Southern District of Ohio, Western Division**
3. **Address:** List current office address and telephone number. If state of residence differs from your place of employment, please list the state where you currently reside.  
  
Greene County Common Pleas Court  
45 North Detroit Street  
Xenia, OH 45385  
telephone: (937) 562-5217
4. **Birthplace:** State date and place of birth.  
  
Date of Birth: October 20, 1948  
Born in Circleville, Ohio as a United States Citizen
5. **Marital Status:** (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Please also indicate the number of dependent children.  
  
**Married:**  
To Sandra Gail (Hoskins) Rose  
On November 16, 1985  
Spouse's employment status:  
Administrative Assistant  
Governor's Regional Economic Development Office  
Suite 2060  
One Dayton Center  
One South Main Street  
Dayton, OH 45402-2016  
  
**Dependent Children:**  
I have no dependent children. I am a guardian of Paige Danielle Johnson, my step-granddaughter.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, and any other institutions of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

**Law School:**

Juris Doctor, University of Cincinnati College of Law, 1973  
Attended 1970 - 1973

**Undergraduate:**

Bachelor of Science-Education, Ohio University, 1970  
Attended 1966 - 1970

7. **Employment Record:** List in reverse chronological order, listing most recent first, all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

**1999 - Present**

Xenia Rotary Club  
Director  
c/o Xenia YMCA  
135 East Market Street  
Xenia, Ohio 45385

**1999 - Present**

Rose Stables  
Partner  
1641 McClellan Road  
Xenia, Ohio 45385

**1995 - Present**

Wiggins & Rose Stables, aka Wiggins&Rose Stables LLP  
Partner  
1641 McClellan Road  
Xenia, Ohio 45385

**1991 - Present**

Greene County Common Pleas Court, General Division  
Judge  
45 North Detroit Street  
Xenia, OH 45385

**1980 - 1981**

Eastern Miami Valley ADAMHS Board  
aka Greene-Clinton Mental Health Board  
Chairperson  
1055 East High Street  
Springfield, Ohio 45505

**1978 - 1991**

Greene County Prosecutor's Office  
Chief Assistant Prosecutor In Charge of Civil Division (concurrent with  
private practice)  
61 Greene Street  
Xenia, OH 45385

**1978 - 1991**

DeWine, Schenck & Rose Attorneys at Law  
(a.k.a. DeWine, Rose, Haller & Sidell Attorneys at Law)  
Member and Partner (concurrent with prosecutor's office)  
Firm no longer in existence, was located at various times at:  
35 East Main St., 280 North Detroit St. and 330 North Detroit St.,  
Xenia, OH 45385

**1976 - 1977**

Greene County Common Pleas Court, Juvenile Division  
Chief Juvenile Court Referee  
2100 Greene Way Boulevard  
Xenia, OH 45385

**1975 - 1976**

DeWine and Rose Attorneys at Law  
Member and Partner  
Firm no longer in existence, was located at:  
35 East Main Street  
Xenia, OH 45385

**1973 - 1975**

Greene County Prosecutor's Office  
Assistant Prosecutor (concurrent with private practice)  
61 Greene Street  
Xenia, OH 45385

**1973 - 1975**

Nicholas Carrera Law Office  
Associate Attorney (concurrent with Prosecutor's Office)  
115 North Whiteman Street  
Xenia, OH 45385

**1971 - 1972**

Fifth Third Bank  
Teller  
38 Fountain Square Plaza  
Cincinnati, OH 45237

8. **Military Service:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number and type of discharge received.

1966 – 1970 Ohio University ROTC  
Commissioned 2<sup>nd</sup> Lieutenant in U.S. Army Reserve in 1970  
Achieved rank of Captain  
Served total of eight years in active/inactive reserve  
Served on active duty for three months in 1973  
Honorably Discharged on June 13, 1978  
Service Number/SSN: 269-44-2825

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

During my legal career, I have received recognition for service to the community from numerous organizations, boards and political subdivisions including from;  
the Greene County Victim Witness Program in recognition of my sensitivity to victims of crime,  
the Greene County ADAMHS Board for service to the Board and the mental health community of Greene County,  
the Xenia Rotary Club in recognition of my community service, and  
the Yellow Springs Masonic Lodge in recognition of my service to the Greene County Community.

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Judicature Society  
Ohio Judicial College – Civil Rules Committee  
Ohio Common Pleas Judges Association  
American Bar Association – Litigation and Judicial Sections

ABA State Trial Judges Association  
Ohio State Bar Association  
Greene County Bar Association  
Judicial Appointment Advisory Group for Ohio Senators Voinovich and DeWine  
(through June 5, 2001)

11. **Bar and Court Admission:** List each state and court in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.  
  
U.S. Supreme Court – admitted to practice in 1978  
Member in good standing, no lapse in membership  
U.S. Court of Appeals, Sixth Circuit – admitted to practice in 1984  
Member in good standing, no lapse in membership  
U.S. District Court, Southern District of Ohio – admitted to practice in 1978  
Member in good standing, no lapse in membership  
State of Ohio – admitted to practice in 1973  
Member in good standing, no lapse in membership
12. **Memberships:** List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, charitable, or other organizations since graduation from college, other than those listed in response to Questions 10 or 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.  
  
Salvation Army, Board member  
Greene County ADAMHS Board, Chairperson  
Xenia Masonic Lodge  
Ancient and Accepted Scottish Rite  
Antioch Shrine of Dayton  
Rotary Club of Xenia, Ohio, Director  
Xenia, Ohio Chamber of Commerce  
Fairborn, Ohio Chamber of Commerce  
Beavercreek, Ohio Chamber of Commerce  
Friends of Blue Jacket  
Symposiarchs  
Greene County Trustee's Association  
Greene County Central Committee of the Republican Party  
United States Trotting Association  
Ohio Harness Horsemen's Association  
(None of the above organizations have discriminated on the basis of race, sex, or religion while I have been a member.)

13. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other material you have written or edited, including material published on the Internet. Please supply four (4) copies of all published material to the Committee, unless the Committee has advised you that a copy has been obtained from another source. Also, please supply four (4) copies of all speeches delivered by you, in written or videotaped form over the past ten years, including the date and place where they were delivered, and readily available press reports about the speech.

My significant publication is an article I prepared for the Supreme Court of Ohio Judicial College regarding how to address the difficult issues faced by a judge who has a *pro se* capital murder defendant. (*A copy of the article may be found in Appendix A.*)

I have also given several speeches during my career as an attorney regarding legal issues. None of them were delivered in written or videotaped form and I do not have records as to the exact dates they were given. The speeches were given to;

- the Xenia Rotary Club regarding the Court and its place in the community,
- the Greene County Trustee's Association regarding the Court System in Greene County and how it effects the Townships and their citizens,
- the residents of Spring Valley, Ohio, regarding Memorial Day Services,
- the graduating class of Bellbrook (Ohio) High School at their commencement ceremony,
- local attorneys as part of a panel presentation regarding the Courts and the Law sponsored by the Montgomery County Bar Association,
- and
- the Greene County Fraternal Order of Police regarding the Court System in Greene County and specific issues of interest to the law enforcement community.

14. **Congressional Testimony:** List any occasion when you have testified before a committee or subcommittee of the Congress, including the name of the committee or subcommittee, the date of the testimony and a brief description of the substance of the testimony. In addition, please supply four (4) copies of any written statement submitted as testimony and the transcript of the testimony, if in your possession.

I have never testified before a committee or subcommittee of the U.S. Congress.

15. **Health:** Describe the present state of your health and provide the date of your last physical examination.

My present health is excellent. I am able to fulfill the obligations of a Federal District Judge without impairment by any medical condition. In addition, I have undergone annual physical examinations for the past several years, the most recent being in May, 2001, and I have never undergone surgery or been

admitted to a hospital. Also, I use medication to control slightly elevated blood pressure and cholesterol.

16. **Citations:** If you are or have been a judge, provide:

- (a) a short summary and citations for the ten (10) most significant opinions you have written (*copies of the opinions that were not officially reported may be found in Appendix B*);

*Home Builders Ass'n of Dayton and the Miami Valley v. City of Beavercreek*, Greene County Common Pleas Court Case Nos. 1994 CV 12 and 62; in an opinion issued September 25, 1997, I found that the City of Beavercreek's "Traffic System Improvement District Ordinance," better known as the "Impact Fee Ordinance," was constitutional on its face and as applied because the ordinance did not constitute an unlawful tax assessment, did not violate substantive due process requirements, was not an invalid exercise of police powers, was not an illegal taking without compensation and was not a deprivation of rights under the Fifth and Fourteenth Amendments to the U.S. Constitution. This was an issue of first impression in Ohio. The Ohio Second District Court of Appeals reversed my decision in their Case No. 1998 WL 735931 (Ohio App. 2 Dist. Oct. 23, 1998)(Nos. 97 CA 113 and 97 CA 115). Subsequently, the Ohio Supreme Court affirmed my opinion in 89 Ohio St.3d 121 (2000).

*Ohio v. Haley*, Greene County Common Pleas Court Case No. 1995 CR 564; in an opinion issued on April 3, 1996, I ruled that the testimony of an expert regarding the accuracy of eye-witness identification was not admissible because the reliability of eye-witness testimony was well within the capability of the jury to decide and the proposed expert testimony would not assist the jury in its determinations.

*Ohio v. Haley*, Greene County Common Pleas Court Case No. 1995 CR 564; in an order issued on May 6, 1996, I sentenced Mr. Haley to a maximum of three hundred eleven (311) years imprisonment based on his conviction in my court of four counts of Aggravated Robbery, four counts of rape, four counts of intimidations of a crime victim or witness, four counts of kidnaping and the use of a firearm in perpetration of a crime. The sentence was based on a thorough analysis of Ohio's "multiple counts" statute and the associated case law.

*Cox v. Barsplice Products, Inc.*, Greene County Common Pleas Court Case No. 1999 CV 798; in an opinion issued on December 4, 2000, I denied an intentional tort claim against an employer because the employer was not substantially certain that an injury would occur. I also denied a negligence claim against the employer because the employer had complied with Ohio Workers' Compensation laws and I denied an associated punitive damages claim brought by the

employer finding that there was no evidence that the employee's conduct in this matter was characterized by hatred, ill-will or the spirit of revenge. My ruling was upheld by the Ohio Second District Court of Appeals in their Case No. 2001 CA 1.

*Bauer v. Fashion Bug* and *Schacker v. Fashion Bug*, Greene County Common Pleas Court Case Nos. 96 CV 218 and 219; in an opinion rendered on June 24, 1998, I found that the acts or failures to act on the part of a retail employer did not rise to the level required to establish an intentional tort against its employee because the employer did not know about the existence of a dangerous condition that led to the employee's injury and the employer did not know that the specific injury would occur. The Ohio Second District Court of Appeals affirmed my decision in their Case No. 98 CA 74.

*Sikora v. Wenzel, et al.*, Greene County Common Pleas Court Case No. 1997 CV 128; in an order entered on May 27, 1998, I dismissed a negligence claim against a condominium owner. The claim had resulted from the collapse of a condominium deck. I dismissed the claim because the owner did not have notice that a problem with the deck existed. My ruling in this case was overturned by the Second District Court of Appeals in their Case No. 1998 CA 130 and my ruling was then affirmed by the Ohio Supreme Court in 88 Ohio St.3d 493(2000).

*Hortsman v. Farris*, Greene County Common Pleas Court Case No. 1997 CV 510; In an opinion issued on May 29, 1998, I dismissed negligence claims against the manufacturer and seller of an "airbrush propellant" brought by those injured when a car driven by the purchaser of the propellant collided head on with another vehicle after the purchaser had purposely inhaled the propellant. The claim against the manufacturer was dismissed because the misuse of the propellant, not a design flaw, was the proximate cause of the injuries. The claim against the seller was dismissed because no reasonable jury could conclude that the seller could reasonably know that the purchaser was going to use the legal substance in an illegal way. This ruling was affirmed by the Second District Court of Appeals in their Case No. 1998 CA 64. Later, on June 3, 1998, I dismissed a negligence claim against the individual in whose home the propellant was inhaled because the owner was not the provider of the propellant that was inhaled.

*Oberer Development Co., et al. v. City of Fairborn*, Greene County Common Pleas Court Case No. 1997 CV 510; on August 14, 1998, I denied the appeal by a residential housing development company of a decision by a city to deny the developer's plan to improve a 4.66 acre plot of land. The appeal was denied because, after a review of the entire record, there was adequate reliable, probative and substantial evidence for the city to reach the decision and the city, therefore, did not abuse its discretion. My decision was affirmed by the Ohio Second District Court of Appeals in their Case No. 1998 CA 96.



*Johnson v. Hilltop Basic Resources, Inc. et al.*, Greene County Common Pleas Court Case No. 1997 CV 170; in an opinion rendered on May 5, 1997, I granted an employer's Motion To Dismiss an intentional tort claim brought by an employee who was injured while working around a conveyor belt. I dismissed this claim because there was no evidence that the employer had knowledge that an injury was certain or substantially certain to occur. I also determined that the statute upon which my determination was based is constitutional. The Ohio Second District Court of Appeals affirmed this ruling in their Case No. 1997 CA 50. I later denied the employee's motion to revise my judgment and to amend his complaint because the employee failed to produce any new, substantive evidence.

*Neuhauser v. Jarusiewicz*, Greene County Common Pleas Court Case No. 1996 CV 280; on May 8, 1997, I dismissed a negligence claim that was filed as a result of an injury sustained when a pedestrian tripped and fell on uneven sidewalk in front of a place of business because of the pedestrian's prior use of the sidewalk and the pedestrian's prior appreciation and understanding of the danger of the irregularity. The Ohio Second District Court of Appeals affirmed my ruling in their Case No. 1997 CA 42.

- (b) a short summary and citations for all rulings of yours that were reversed or significantly criticized on appeal, together with a short summary of and citations for the opinions of the reviewing court (*copies of the opinions that were not officially reported may be found in Appendix C*); and

In *State v. McDaniel*, Greene County Common Pleas Court Case No. 2000 CR 198(May 23, 2000), the Defendant was sentenced to the maximum penalty for Involuntary Manslaughter. The Second District Court of Appeals, in Case No. 2000 CA 55, reversed and remanded for resentencing stating that I erroneously based my finding on beatings suggested by the autopsy report.

In *State v. Grubbs*, the Ohio Second District Court of Appeals reversed my acceptance of Defendant's Plea of Guilty after finding that the plea was not voluntarily, knowingly and intelligently made. The trial court case is Greene County Common Pleas Court Case No. 1997 CR 286(December 7, 1998) and the appeal is Case No. 1997 CA 125.

In *State v. Combs*, Greene County Common Pleas Court Case No. 1998 CR 142(October 26, 1998), the Defendant was found guilty, in a trial to the Court, of abduction, burglary, aggravated burglary, aggravated menacing and assault. The Second District Court of Appeals, in Case No. 1998 CA 137, reversed my finding of guilty of abduction with instructions to enter a finding of guilty of attempted abduction and impose a sentence for that offense.

*Wodrich v. Farmers Insurance*, Greene County Common Pleas Court Case No. 1997 CV 136 (September 3, 1998), was an insurance coverage dispute in which I granted Summary Judgment to the Insurance Company. The Second District Court of Appeals, in Case No. 1998 CA 103, reversed my applications of Ohio Revised Code §3937.18, of guaranteed renewal provisions in insurance contracts, and of UM and UIM coverage.

In *State v. Seward*, Greene County Common Pleas Court Case No. 1998 CR 166 (June 11, 1998), the Defendant was found guilty of a fifth degree felony for receiving stolen property. The stolen property in question was a license plate validation sticker. The Second District Court of Appeals, in Case No. 1998 CA 107, determined that stealing a license plate validation sticker is a first degree misdemeanor and not a felony pursuant to the Ohio statute addressing theft of license plates.

In *State v. Jones*, Greene County Common Pleas Court Case No. 1997 CR 105 (January 23, 1998), I used the fact that Jones held a "public trust, office or position" as a basis for sentencing. The Second District Court of Appeals, in Case No. 1998 CA 9, remanded the case for resentencing after finding that the individual must not only hold the position of public trust, but the offense must also be related to the position.

In *AT&T Wireless PCS, Inc. v. Beavercreek Twp. Zoning Appeals*; Greene County Common Pleas Court Case No. 1997 CV 42 (January 15, 1998), I determined that "zoned for residential use" as used in Ohio Revised Code §519.211(B) means any zoning district in which residential use is not prohibited. The Second District Court of Appeals, in Case No. 1998 CA 18, affirmed my ruling, and the Ohio Supreme Court reversed the Court of Appeals in 87 Ohio St.3d 559 (2000).

In *State v. Forrester*, Greene County Common Pleas Court Case No. 1995 CR 397 (December 9, 1996), I determined that a search warrant was not needed because Defendant's spouse had given voluntary consent to search fields in the rear of their home where marijuana was found growing. The Ohio Second District Court of Appeals, in Case No. 1997 CA 47, remanded the case to determine whether the police used threats or coercion to obtain the consent to search.

In *Sholiton Industries v. Wright State University*, Greene County Common Pleas Court Case No. 1995 CV 126 (October 13, 1995), I determined that Plaintiff had a complete and adequate remedy at law for a breach of contract and I denied an equitable remedy. The Second District Court of Appeals, in Case No. 1995 CA 101, reversed finding that the contract involved an interest in land and specific performance, an equitable remedy, was thus available.

In *Underwood v. Esterline*, Greene County Common Pleas Court Case No. 1992 CV 526(October 13, 1993), I denied Plaintiffs' Motion for Leave To Amend their Complaint and granted Defendant's Motion To Dismiss. The Second District Court of Appeals, in Case No. 1993 CA 72, reversed me finding that the Motion To Amend should have been granted because the Amended Complaint related back to the original filing.

In *Ellis v. Midwestern Indemnity*, Greene County Common Pleas Court Case No. 1992 CV 36(June 29, 1992), I granted Defendant's Motion for Summary Judgment and determined that my court did not have subject matter jurisdiction in an action by an insured against a foreign insurer because the case involved interpretation of the laws of a foreign country. The Ohio Second District Court of Appeals, in Case No. 1992 CA 68, reversed finding that subject matter jurisdiction existed because the insurance contract was made in Ohio between Ohio parties and Defendant was not entitled to Summary Judgment.

In *State v. Wilson*, Greene County Common Pleas Court Case No. 1991 CR 4(October 24, 1991), the Defendant was found guilty, after a jury trial, of aggravated trafficking in drugs, a first degree felony, and sentenced to an indefinite term of four to fifteen years imprisonment. On appeal, the Ohio Second District Court of Appeals, in Case No. 1992 CA 13, determined that I was following Ohio Supreme Court case law in not permitting the disclosure of the State's confidential witness. However, the Second District Court of Appeals reversed me saying that, "if the Supreme Court of Ohio were today presented with the facts . . . a different result would pertain."

- (c) a short summary of and citations for all significant opinions on federal or state constitutional issues, together with the citation for appellate court rulings on such opinions (*copies of the opinions that were not officially reported may be found in Appendix D*).

*State v. Dancey*, Greene County Common Pleas Court Case No. 1993 CR 444; in this opinion issued on February 2, 1994, I denied the Defendant's Motion To Suppress Identification finding that the identification procedure was not suggestive and that there was not a substantial likelihood of irreparable misidentification. I was affirmed by the Ohio Second District Court of Appeals in their Case No. 1994 CA 24.

*State v. Walker*, Greene County Common Pleas Court Case No. 1998 CR 40; in this opinion, issued on April 15, 1998, I denied Defendant's Motion To Suppress evidence found in a "pat down" search of Defendant and a search of residential property. The Motion To Suppress regarding the "pat down" search was denied because the "pat down" was initially performed for safety and was directed at finding possible weapons. The Motion To Suppress regarding the search of the property was denied because Defendant had no connection with or interest in

the property and therefore had no reasonable expectation of privacy in this residential property. The Ohio Second District Court of Appeals affirmed my ruling in their Case No. 1998 CA 57.

*State v. Austin*, Greene County Common Pleas Court Case No. 1997 CR 59; in this opinion issued on May 5, 1997, I denied a Motion To Suppress evidence found upon a search of Defendant's room finding that the Officer entered the room with the consent of residents who had authority or shared authority over the residence. Also, I granted a Motion To Suppress statements obtained from the Defendant because the totality of the circumstances, including the lack of Miranda warnings, indicated that the Defendant's statements were not voluntarily made. In Case No. 1997 CA 54, the Ohio Second District Court of Appeals affirmed my decision.

*State v. Cooper*, Greene County Common Pleas Court Case No. 1996 CR 479; on December 6, 1996, I overruled Defendant's Motion To Suppress evidence found in plain view when officers inspected Defendant's garage because the garage door was left open and, when Defendant's wife met the officers, she did not order them out of the garage. I was affirmed by the Ohio Second District Court of Appeals in their Case No. 1997 CA 15.

*State v. Hull*, Greene County Common Pleas Court Case No. 1996 CR 52; in this opinion, issued on December 6, 1996, I overruled Defendant's Motion To Suppress evidence obtained during the search of Defendant's vehicle because it was a valid traffic stop and Defendant gave consent for the search prior to being issued a citation. This ruling was affirmed by the Ohio Second District Court of Appeals in their Case No. 1997 CA 22.

17. **Public Office, Political Activities and Affiliations:**

- (a) List chronologically any public offices you have held, federal, state or local, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or nominations for appointed office for which were not confirmed by a state or federal legislative body.

**1973 – 1975**

Assistant Prosecutor  
Greene County Prosecutor's Office  
Appointed by Prosecutor Nicholas A. Carrera

1978 – 1991

Assistant Prosecutor  
Greene County Prosecutor's Office  
Appointed by Prosecutor R. Michael DeWine and Prosecutor William F. Schenck

I have not run for or been nominated to a non-judicial office.

- (b) Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1990, I was the Greene County Ohio Campaign Chairperson for the candidacy of George Voinovich for Governor of Ohio and Michael DeWine for Lieutenant Governor of Ohio. My responsibilities included; the planning and coordination of campaign events in Greene County, the organization of door to door canvassing of selected neighborhoods, and the recruiting of campaign workers. I coordinated activities in Greene County and with other campaign personnel throughout the State of Ohio.

From 1984 to January 1, 1991, I served as the campaign treasurer for the William F. Schenck For Prosecutor Committee, Greene County, Ohio. As campaign treasurer, I was responsible for accounting for monies received and expended by this campaign committee as well as the preparation and filing of all required election financial reports with the appropriate local and state authorities.

18. **Legal Career:** Please answer each part separately.

- (a) Describe chronologically your law practice and legal experience after graduation from law school including:

- (1) whether you served as clerk to a judge, and if so, the name for the judge, the court and dates of the period you were a clerk;

I have not served as a clerk to a judge.

- (2) whether you practiced alone, and if so, the addresses and dates;

I have not practiced law alone.

- (3) the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

**1991 - Present**

Greene County Common Pleas Court, General Division  
Judge  
45 North Detroit Street  
Xenia, OH 45385

**1978 - 1991**

Greene County Prosecutor's Office  
Chief Assistant Prosecutor In Charge of Civil Division (concurrent with private practice)  
61 Greene Street  
Xenia, OH 45385

**1978 - 1991**

DeWine, Schenck & Rose Attorneys at Law  
(a.k.a. DeWine, Rose, Haller & Sidell Attorneys at Law)  
Member and Partner (concurrent with prosecutor's office)  
Firm no longer in existence, was located at various times at:  
35 East Main St., 280 North Detroit St. and 330 North Detroit St.,  
Xenia, OH 45385

**1976 - 1977**

Greene County Common Pleas Court, Juvenile Division  
Chief Juvenile Court Referee  
2100 Greene Way Boulevard  
Xenia, OH 45385

**1975 - 1976**

DeWine and Rose Attorneys at Law  
Member and Partner  
Firm no longer in existence, was located at:  
35 East Main Street  
Xenia, OH 45385

**1973 - 1975**

Greene County Prosecutor's Office  
Assistant Prosecutor (concurrent with private practice)  
61 Greene Street  
Xenia, OH 45385

**1973 - 1975**

Nicholas Carrera Law Office  
Associate Attorney (concurrent with Prosecutor's Office)  
115 North Whiteman Street  
Xenia, OH 45385

- (b) (1) Describe the general character of your law practice and indicate by date if and when its character has changed over the years.

My private practice was general in nature. Although I did not specialize in any one particular field of law, most of my work was in the areas of civil litigation, business law and real estate transactions.

- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In my private practice, my clients were typically individuals and small businesses from the local community. As a prosecuting attorney, I was engaged in criminal litigation for approximately four years and then as a litigator representing Greene County, Greene County Officials and Greene County Boards.

My litigation experience prior to becoming a judge was widely varied and extensive. In my private practice, I litigated personal injury lawsuits, contract disputes, will contests, adverse possession cases, appeals to administrative agencies and all types of domestic relations matters.

As an assistant prosecutor, I prosecuted many cases, both adult and juvenile. Matters that I prosecuted in the juvenile area included delinquency, paternity, unruliness, dependence and neglect and abuse. In the adult area, I prosecuted all types of criminal matters from misdemeanors in the county court to capital murder cases in the common pleas court. Also while in the prosecutor's office, I addressed a wide variety of legal matters for the many elected officials and units of government that are represented by the prosecutor. These matters ranged from litigation in federal court regarding the mainstreaming of special needs children into regular school classrooms and jail overcrowding to litigation in the common pleas court regarding fence disputes and labor matters. An example of the complexity of these matters was the actual separation of a city from a township including the division of assets, liabilities, funds and income.

- (c) (1) Describe whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe each such variance, providing dates.

My work in private practice and as a prosecutor entailed spending about 50% of my time in the courtroom.

(2) Indicate the percentage of these appearances in

- (A) federal courts;
- (B) state courts of record;
- (C) other courts.

About 75% of my courtroom time was in state court, about 20% in federal court and the remainder in appeals before administrative agencies.

(3) Indicate the percentage of these appearances in:

- (A) civil proceedings;
- (B) criminal proceedings.

About 75% of my court time was on civil matters and the remaining 25% on criminal and juvenile matters.

(4) State the number of cases in courts of record you tried to verdict or judgment rather than settled, indicating whether you were sole counsel, chief counsel, or associate counsel.

During my years of practice (1973-1991), I tried approximately 24 cases to verdict, most of them as the sole counsel.

(5) Indicate the percentage of these trials that were decided by a jury.

About 40% of these trials were before a jury.

(d) Describe your practice, if any, before the United States Supreme Court. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the U.S. Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court

(e) Describe legal services that you have provided to disadvantaged persons or on a *pro bono* basis, and list specific examples of such service and the amount of time devoted to each.

During my 17 years of private practice, I regularly provided legal services at reduced or *pro bono* terms. On numerous occasions, I represented individuals with limited financial means in the Domestic Relations Court in matters involving divorce, child support and child custody. I also provided legal services on a *pro bono* basis to individuals who elected to adopt or obtain custody of neglected, abused and/or abandoned children who were in the custody of public agencies.



In addition, on many occasions, I provided free legal services and advice on general legal matters to less fortunate individuals. Specific examples include:

I represented Ms. Alberta Jean Scott pro bono for an extended period of time from approximately 1978 through 1985. I worked on various estate and probate matters and contract litigation regarding Ms. Scott's deceased husband. I helped Ms. Scott resolve certain financial obligations owed to her and owed by her. Ms. Scott resided at U.S. Rt 42 South, Xenia, Ohio, and is now deceased.

I provided legal advice pro bono to Ms. Ora Mae Barbour regarding numerous post-decree divorce matters. Ms. Barbour found it necessary on numerous occasions to pursue delinquent spousal support payments in the late 1970's and early 1980's. Ms. Barbour was a resident of Xenia, Ohio, and is now deceased.

I represented the Good Shepherd Clinic on a pro bono basis from its formation in the early 1980's until I took the bench in 1991. Good Shepherd is a non-profit corporation headquartered in Xenia, Ohio, that operates a medical clinic in Belise City, Belize. I provided corporate law advice and legal advice on a variety of other matters.

I represented the Guardianship of Mr. James Grindle who resided in the Friends Care Center in Yellow Springs, Ohio. Mr. Grindle received minimal income and other assistance. As his guardian, I made sure he received the income to which he was entitled. I also made sure his personal needs were taken care of. I represented Mr. Grindle beginning in the early 1980's until I took the bench in 1991. Mr. Grindle is now deceased.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, and for each provide the date of representation, the name of the court, the name of the judge or judges before whom the case was litigated and the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties. In addition, please provide the following:
- (a) the citations, if the cases were reported, and the docket number and date if unreported;
  - (b) a detailed summary of the substance of each case outlining briefly the factual and legal issues involved;
  - (c) the party or parties whom you represented; and
  - (d) describe in detail the nature of your participation in the litigation and the final disposition of the case.

I have litigated a wide variety of issues in several different courts:

Capital Murder(1974): I was Assistant Prosecuting Attorney and co-counsel representing the State of Ohio in a capital murder case against Defendant Robert Lytle. I assisted the Prosecutor in the preparation and presentation of this case to a jury. There were factual issues regarding the elements of murder and issues regarding aggravating and mitigating circumstances. The Defendant was found guilty and the death penalty was imposed. The case is *State v. Lytle*, Greene County Common Pleas Court Case. No. 1974 CR 149. The Judge was Daniel Aultman who is now deceased.

Co-counsel: Nicholas Carrera  
115 North Whiteman Street  
Xenia, Ohio 45385  
telephone: (937) 372-4431

Opposing Counsel: Rodney Keisch  
4428 North Dixie Drive  
Dayton, Ohio 45414  
telephone: (937) 278-1543

Mainstreaming of Mentally Retarded Children(1980): I represented the Superintendent of the Beavercreek Schools in an action brought in Federal District Court by parents of a mentally retarded child alleging that failure to provide the child an education wholly within the local public school system, including providing the necessary special services, denied the child the education that was most appropriate to his needs in the least restrictive environment. The issue tried in this case was whether a child being partially educated in a school serving only handicapped children and partially at an elementary school serving nonhandicapped peers was satisfactory. The Court determined that partial mainstreaming was not an acceptable solution. The case, captioned *Seleyo v. William Drury*, 508 F.Supp. 122, was tried before Judge Walter Rice in the Federal District Court, Southern District of Ohio, Western Division.

Opposing Counsel: Barry Cohen  
77 South High Street  
Columbus, Ohio 43266  
telephone: (614) 466-8574

Legality of Zoning Ordinance(1984): I represented the Silvercreek Township Trustees in a complaint seeking a permanent injunction against the Defendants. The issue was whether the Silvercreek Township zoning ordinance was unconstitutional as applied to the use of the Defendants' property. The Court determined that the zoning ordinance did include Defendant's current use within its purview and that the resolution was not unconstitutional as applied to Defendants and their property. The case, captioned *Silvercreek Township v. Michael R. Brown, et al.*, Greene County Common Pleas Court Case No. 1984 CV 452, was tried before Judge Edward R. Kimmell. The Ohio Second District

Court of Appeals affirmed the trial court decision in their Case No. 87 CA 16 (1987 WL 14732).

Opposing Counsel: David W. Cox  
85 West Main Street  
Xenia, Ohio 454385  
telephone: (937) 372-6921

Appeal of Student Discipline(1988): I represented the Greeneview School District in defense of an appeal of the suspension of a student from school for five days for allegedly violating School Board policy prohibiting students from being under the influence of alcoholic beverages. The issues litigated in the appeal of the suspensions were whether sufficient notice of the school action was given and whether the record substantiated the School Board's action. The Board's action was reversed by the trial court. The case, captioned *Evans v. Greeneview Local School District*, Greene County Common Pleas Court Case No. 1988 CV 119, was heard before Judge Edward R. Kimmell. The trial court's decision was affirmed by the Ohio Second District Court of Appeals in their Case No. 88 CA 40 (1989 WL 569).

Opposing Counsel: David Orlins  
100 East Market Street  
Xenia, Ohio 45385  
telephone: (937) 372-9236

Appeal of Tax Valuation(1987): I represented the County Board of Revision, Board of Tax Appeals and the Tax Commissioner in an appeal from a valuation of real property for tax assessment purposes. The appeal was brought by the owner of the Cedarville Elderly Apartments. The issue before the Court was whether the valuation was unreasonable and unlawful. The Court found no abuse of discretion and that the valuation was not unreasonable or unlawful. The case, captioned *Wickline v. Greene County Board of Revision and Board of Tax Appeals and Tax Commissioner*, was heard by the Ohio Second District Court of Appeals in their Case No. 86 CA 89 and published as 1987 WL 14247. Judge William Wolfe presided.

Opposing Counsel: J. Timothy Campbell  
260 North Detroit Street  
Xenia, Ohio 45385  
telephone: (937) 372-4411

Annexation (1979): I represented the Greene County Commissioners in the appeal of a Commission decision denying a petition for annexation to the City of Beavercreek of 1.093 acres of land located in Sugarcreek Township. The Commissioners' decision was overturned by the trial court as being unreasonable, arbitrary, capricious and unsupported by probative evidence because all of the property was owned by one individual who knew what was best for his property. The case, captioned *Fyffe v. Board of Greene County*

*Commissioners*, Greene County Common Pleas Court Case No. 1979 CV 408, was tried before Judge Paul E. Riley. I appealed the trial court's decision to the Ohio Second District Court of Appeals. In their Case No. 1123 (1981 WL 2762), the Court of Appeals determined that the Commission did not have standing to appeal because, since they are an impartial tribunal in this situation, they cannot be an interested party.

Opposing Counsel: Bernard J. Schaeff  
500 One Dayton Center  
One South Main Street  
Dayton, Ohio 45402-2023  
telephone: (937) 223-2050

Labor Contract Litigation(1977): I represented Defendant Greeneview School District in a labor contract dispute raised by the Greeneview Education Association. The issue before the Court was the legality of the school-year calendar that was set by the School District. The Court found that the calendar was in compliance with the contractual agreement between the parties and the School District has broad latitude in the administration and operation of schools. The case, captioned *Greeneview Education Association v. Greeneview Board of Education*, Greene County Common Pleas Court Case No. 1977 CV 270, was tried in the court of Judge Edward R. Kimmell. The decision was affirmed by the Ohio Second District Court of Appeals in Case No. 1097 (1981 WL 2812).

Opposing Counsel: James R. Kirkland  
Suite 518  
111 West First Street  
Dayton, Ohio 45402  
telephone (937) 223-069

Estate Litigation(1986): I represented a surviving child in taking exceptions to the inventory and appraisal of the Decedant. The issue was whether all of the farming assets belonged in the estate or were divided between the Decedant and another of the Decedant's children. The Court said that it could not determine what the parties intended or what they understood the farming relationships to be. The Court concluded that the farm was being operated on a 50-50 basis and only half of the farming assets would be included in the estate. The case, captioned *In the Matter of the Estate of Charles D. Manor*, Greene County Probate Court Case No. 22057, was heard by Judge Robert A. Hagler. The Ohio Second District Court of Appeals affirmed the probate court's decision in their Case No. 86 CA 23 (1986 WL 11818).

Opposing Counsel: Lester Ferguson  
3010 U.S. 35 East  
Xenia, Ohio 45385  
telephone: (937) 372-9963

Unemployment Compensation Appeal(1980): I represented employee Robert Hoskins who was discharged by Tatone Lincoln Mercury. Hoskins was initially awarded unemployment benefits by the Bureau of Unemployment. Tatone appealed this award to the Greene County Common Pleas Court (*Tatone Lincoln Mercury v. Albert Coles, Administrator of Ohio Bureau of Employment Services*, Case No. 1980 CV 368, which found that the previous determinations by the Bureau and the Board of Review were not supported by evidence. The Ohio Second District Court of Appeals reversed the trial court and affirmed the Board of Review's determination in Second District Case No. 81 CA 16 reported as 1981 WL 2859. The trial court judge was Edward R. Kimmell and the appeal court judge was James Brogan. The opposing attorney was Merritt E. Schlafman who is now deceased.

Election law(1990): I represented the Greene County Board of Elections in defending an application for a Writ of Mandamus filed by William Clinard seeking placement on a primary ballot as a Democrat Party nominee for the office of Greene County Common Pleas Judge. The case reached the Supreme Court of Ohio where the Court determined that the Board of Elections did not disregard the appropriate statutes and did not abuse its discretion by invalidating Clinard's petitions. *State, ex rel. Clinard v. Greene County Board of Elections*, 51 Ohio St.3d 87. Mr. Clinard was pro se in this matter.

20. **Criminal History:** State whether you have ever been convicted of a crime, within ten years of your nomination, other than a minor traffic violation, that is reflected in a record available to the public, and if so, provide the relevant dates of arrest, charge and disposition and describe the particulars of the offense.

I have never been convicted of a crime other than a minor traffic violation.

21. **Party to Civil or Administrative Proceedings:** State whether you, or any business of which you are or were an officer, have ever been a party or otherwise involved as a party in any civil or administrative proceeding, within ten years of your nomination, that is reflected in a record available to the public. If so, please describe in detail the nature of your participation in the litigation and the final disposition of the case. Include all proceedings in which you were a party in interest. Do not list any proceedings in which you were a guardian *ad litem*, stakeholder, or material witness.

In the past ten years, I have not been personally involved in any litigation except as a Judge. As a Judge, I have been unsuccessfully sued by litigants alleging violations of civil or constitutional rights. Following are descriptions of these actions including the final dispositions:

- (1) On October 21, 1996, Arthur Beck, an inmate in the Madison Correctional Institution, petitioned the Ohio Second District Court of Appeals for a writ of mandamus directing me to issue findings of fact and conclusions of law

to support my earlier denial of Beck's petition for post-conviction relief. On December 12, 1996, the Second District Court of Appeals dismissed Beck's petition for a writ of mandamus in Ohio Second District Court of Appeals Case No. 1996 CA 129.

- (2) Raymond Engle filed a civil rights lawsuit in the Federal District Court, Southern District of Ohio against 26 individuals who were allegedly involved in his illegal arrest, confinement, prosecution, and ultimate conviction for burglary and felonious assault. Engle named the arresting officers; medics, nurses and a physician who attended his medical needs after his arrest; the psychologists who examined him before trial; prosecutorial staff, me as the trial Judge and the Clerk's office staff who were involved in his criminal prosecution; state appellate Judges who denied him habeas corpus relief; the Sheriff and his staff who maintained the jail where Engle stayed pending his trial; and a news organization which reported on his trial. The Federal District Court for the Southern District of Ohio dismissed all of Engle's claims and Engle appealed to the United States Court of Appeals for the Sixth Circuit. On December 9, 1997, the Sixth Circuit affirmed the District Court in case 132 F.3d 32. The Federal District Court's Case Number is 94-00212 (Rice 9-29-95).
- (3) On June 9, 1998, James L. Stewart petitioned the Ohio Second District Court of Appeals for a writ of mandamus directing me to rule on Stewart's "motion for judgment on motion in contra to sexual predator determination." Stewart's motion had been filed in response to the Greene County Prosecutor's Office's request for a determination of Stewart's sexual predator status. I had stayed any further action until issues surrounding Ohio's sexual predator statute were resolved. On July 31, 1998, the Ohio Second District Court of Appeals dismissed Stewart's petition for a Writ of Mandamus in their case number 98 CA 56 which was published as 1998 Ohio App. LEXIS 3476.

22. **Potential Conflict of Interest:** Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated.

I will take all potential conflicts of interest or appearances of conflicts of interest seriously and will follow the appropriate law and codes of conduct in resolving them.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or arrangements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans to pursue outside employment during my service as a Federal District Judge.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding the nomination, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500. If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.

A copy of my financial disclosure report (prepared per the instructions for my judicial nomination) is attached.

25. **Statement of Net Worth:** Complete and attach the financial net worth statement in detail. Add schedules as called for.

My financial net worth statement and the associate schedules are attached.

26. **Selection Process:** Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

(a) If so, did it recommend your nomination?

To the best of my knowledge, there was no selection commission which conducted interviews or made recommendations of candidates for the position of Judge of the Federal District Court, Southern District of Ohio, Western Division. Ohio Senators DeWine and Voinovich established a Judicial Appointment Advisory Group to review candidates for the position of Judge, Federal District Court, Northern District of Ohio. I was a member of this group until June 5, 2001. This group did not review candidates for the position of Judge, Federal District Court, Southern District of Ohio.

(b) Describe your experience in the judicial selection process, including the circumstances leading to your nomination and the interviews in which you participated.

After learning that a judicial position may be open, I forwarded my application to Ohio Senators George Voinovich and Michael DeWine. After a review of my application, Senators DeWine and Voinovich recommended me to the President of the United States. Since that recommendation, I have met with and been interviewed by representatives of the White House, the Department of Justice and the Federal Bureau of Investigation.

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- (c) Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such case, issue, or question? If so, please explain fully.

During the selection process, no one has discussed with me any specific case, legal issue or legal question in a manner which, in any way, could be interpreted as asking how I would rule on such a case, issue, or question.



AO-JO (4)  
Rev. 1/2000**FINANCIAL DISCLOSURE REPORT**  
**Nomination Report**Report required by the Ethics in  
Government Act of 1978, as amended  
(5 U.S.C. App. 4, Sec. 101-112)

<b>1. Person Reporting</b> (Last name, first, middle initial) Rose, Thomas M.	<b>2. Court or Organization</b> District Court - S.D. Ohio	<b>3. Date of Report</b> 01/28/2002
<b>4. Title</b> (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge Nominee	<b>5. Report Type (check type)</b> X Nomination, Date 01/23/2002 Initial _____ Annual _____ Final _____	<b>6. Reporting Period</b> 01/01/2001 to 12/31/2001
<b>7. Chambers or Office Address</b> Greene County Courthouse 45 North Detroit Street Xenia, OH 45385	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.</b>  Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.		

**I. POSITIONS** (Reporting individual only; see pp. 9-13 of Instructions.)

POSITION	NAME OF ORGANIZATION / ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Wiggins&Rose Stables L.L.P.
2 Partner	Rose Stables
3 Director	Xenia Rotary Club, Xenia, Ohio

**II. AGREEMENTS** (Reporting individual only; see pp. 14-16 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 1976	Public Employees Retirement System, no control
2 1982	Ohio Deferred Compensation Fund, self-directed employee retirement benefit plan
3	

**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2001	State of Ohio/Greene County-Judicial Salary	\$80,309.55
2 2000	State of Ohio/Greene County-Judicial Salary	\$77,975.06
3 2001	State of Ohio Department of Economic Development-Spouse	
4 2000	State of Ohio Department of Economic Development-Spouse	

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Rose, Thomas M.	01/28/2002

**IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.**  
*(Includes those to spouse and dependent children. See pp. 25-28 of Instructions.)*

	SOURCE NONE (No such reportable reimbursements.)	DESCRIPTION
1	Exempt	
2		
3		
4		
5		
6		
7		

**V. GIFTS**  
*(Includes those to spouse and dependent children. See pp. 29-32 of Instructions.)*

	SOURCE NONE (No such reportable gifts.)	DESCRIPTION	VALUE
1	Exempt		
2			
3			

**VI. LIABILITIES**  
*(Includes those of spouse and dependent children. See pp. 33-35 of Instructions.)*

	CREDITOR NONE (No reportable liabilities.)	DESCRIPTION	VALUE CODE*
1	Sky Bank	Mortgage on rental property #1, Xenia, Ohio	K
2			
3			
4			
5			
6			

\* VAL CODES: J=\$15,000 or less K=\$15,001-\$50,000 L=\$50,001 to \$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000  
 O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more

FINANCIAL DISCLOSURE REPORT		Name of Person Reporting Rose, Thomas M.		Date of Report 01/28/2002	
<b>VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions</b> <i>(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)</i>					
A. Description of Assets (including trust assets)  <i>Place "00" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)
					If not exempt from disclosure (2) Date: (3) Value (4) Gain (5) Identity of Month: Code Code Code buyer/seller Day (J-P) (A-H) (if private transaction)
NONE (No reportable income, assets, or transactions.)					
1 LFL Financial Services Investment Account					
2 -Premier Money Market Fund	A	Dividend	J	T	Exempt
3 -CISCO Systems Common Stock		None	J	T	Exempt
4 -Microsoft Common Stock		None	J	T	Exempt
5 -Wal-Mart Common Stock	A	Dividend	J	T	Exempt
6 -Oppenheimer Quest Value Fund	A	Dividend	J	T	Exempt
7 -Putnam Health Sciences Trust		None	J	T	Exempt
8 AIM Aggressive Growth Fund	A	Dividend	J	T	Exempt
9 Huntington Bankshares Common Stock	A	Dividend	J	T	Exempt
10 Saltcreek Valley Bank Common Stock	A	Dividend	J	T	Exempt
11 AT&T Latin America Common Stock		None	J	T	Exempt
12 Comdisco Common Stock		None	J	T	Exempt
13 Putnam Investments IRA	B	Distribution	K	T	Exempt
14 -Putnam Global Growth Fund CL A					
15 -Putnam Health Sciences Trust CL A					
16 -Putnam Vista Fund CL A					
17 Self-directed Ohio Public Employees Deferred Comp Plan	C	Dividend	M	T	Exempt
1 Inc/Unit Codes: A=\$1,000 or less B=\$1,001-\$2,500 C=\$2,501-\$5,000 D=\$5,001-\$15,000 E=\$15,001-\$50,000 (Col. B1, D4) F=\$50,001-\$100,000 G=\$100,001-\$1,000,000 H=\$1,000,001-\$5,000,000 I2=\$5,000,001 or more					
2 Val Codes: J=\$15,000 or less K=\$15,001-\$30,000 L=\$30,001-\$100,000 M=\$100,001-\$250,000 N=\$250,001-\$500,000 (Col. C1, D3) O=\$500,001-\$1,000,000 P1=\$1,000,001-\$5,000,000 P2=\$5,000,001-\$25,000,000 P3=\$25,000,001-\$50,000,000 P4=\$50,000,001 or more					
3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (Col. C2) U=Book Value V=Other W=Estimated					

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Rose, Thomas H.	Date of Report 01/28/2002
	(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)	

**VII. Page 2 INVESTMENTS AND TRUSTS— income, value, transactions** (Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)

A. Description of Assets (including trust assets)  <i>Place "NONE" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (I-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income/assets, or transactions.)									
18 --OGEK Guaranteed Return Option									
19 --Fidelity Equity Income									
20 --Putnam Investors									
21 --Janus Fund									
22 --AIM Constellation									
23 --Vanguard International Growth									
24 Wiggins-Rose Stables L.L.F.	A	Distribut ion	J	W	Exempt				
25 Rose Stables, Partnership	A	Distribut ion	J	W	Exempt				
26 Rental Property #1, Xenia, Ohio	A	Rent	L	Q	Exempt				
27 Public Employee Retirement		None	N	T	Exempt				
28									
29									
30									
31									
32									
33									
34									

1 Incl Gain Codes: A=\$1,000 or less (Col. B1, D4)	B=\$1,001-\$2,500 G=\$100,001-\$1,000,000	C=\$2,501-\$5,000 H1=\$1,000,001-\$5,000,000	D=\$5,001-\$15,000 H2=\$5,000,001 or more	E=\$15,001-\$50,000
2 Val Codes: J=\$15,000 or less (Col. C1, D3)	K=\$15,001-\$50,000 P1=\$1,000,001-\$5,000,000	L=\$50,001-\$100,000 P2=\$5,000,001-\$25,000,000	M=\$100,001-\$250,000 P3=\$25,000,001-\$50,000,000	N=\$250,001-\$500,000 P4=\$50,000,001 or more
3 Val Meth Codes: Q=Appraisal (Col. C2)	R=Cost (real estate only) U=Book Value V=Other	S=Assessment W=Estimated	T=Cash/Market	

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<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Rose, Thomas M.	Date of Report 01/28/2002
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.**

(Indicate part of report.)

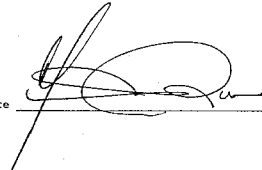
Rental property #1 last appraised in May, 2001

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting Rose, Thomas M.	Date of Report 01/28/2002
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**IX. CERTIFICATION**

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 1-28-2002

Note: Any individual who knowingly and wilfully falsifies or fails to file this report may be subject to civil and criminal sanctions (5 U.S.C. App. 4, Section 104).

**FILING INSTRUCTIONS**

Mail original and three additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-301  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	10	000	00	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	46	699	72	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	200	000	00
Real estate owned-add schedule	235	110	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property	50	000	00	Credit Cards	3	000	00
Cash value-life insurance	54	818	00				
Other assets itemize:							
Traditional IRA	21	453	64				
Deferred Compensation Plan	183	857	24				
PERS Retirement	120	000	00	Total liabilities	203	000	00
				Net Worth	518	938	60
Total Assets	721	938	60	Total liabilities and net worth	721	938	60
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	none			Are any assets pledged? (Add schedule)	none		
On leases or contracts	none			Are you defendant in any suits or legal actions?	none		
Legal Claims	none			Have you ever taken bankruptcy?	no		
Provision for Federal Income Tax	none						
Other special debt	none						

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SCHEDULES  
FOR THE  
FINANCIAL NET WORTH STATEMENT  
OF  
THOMAS M. ROSE  
January 23, 2002

Schedule of Listed Securities

<u>Security</u>	<u>Quantity</u>	<u>Value</u>
Cisco Systems Inc.	448.000	\$8,480.64
Microsoft Corp.	28.000	1,788.92
Walmart Stores	160.000	9,576.00
Huntington Bankshares	432.267	7,607.90
Salt Creek Valley Bankshares	200.000	8,000.00
AT&T Latin America	120.000	120.00
Comdisco	40.000	28.80
Oppenheimer Quest Value Fund	124.176	3,956.24
Putnam Health Science Trust	73.665	4,629.10
Premier Money Market Shares	239.440	239.44
AIM Aggressive Growth Fund	240.495	2,272.68
Putnam Global Growth Fund CI-A	1,235.396	9,450.78
Putnam Health Sciences Trust CI-A	109.126	6,857.48
Putnam Vista Fund CI-A	595.530	5,145.38

Schedule of Securities In Deferred Compensation Plan

Fidelity Equity Income	748.324	\$36,495.77
Putnam Investors	2,708.170	31,279.37
Janus Fund	1,619.212	39,832.64
AIM Constellation	967.163	22,776.69
Vanguard International Growth	1,352.225	20,296.90
OPEDC Guaranteed Return Option	19,690.100	33,175.87

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Schedule of Owned Real Estate

Parcel #1	Home and approximately five acres of land located at 1641 McClellan Road, Spring Valley Township, Xenia, Ohio, 45385, owned jointly with spouse, Sandra G. Rose
Parcel #2	Home at 142 Colorado Drive, Xenia, Ohio, 45385, owned by spouse Sandra G. Johnson NKA Sandra G. Rose with dower interest in Thomas M. Rose
Value of Parcel #1	\$167,170
Value of Parcel #2	\$ 67,940

Schedule of Real Estate Mortgages Payable

Mortgage on Parcel #1 above	\$160,000
Mortgage on Parcel #2 above	\$ 40,000



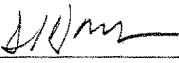
1241

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Mays, Jr., Samuel H.	01/25/2002

IX. CERTIFICATION

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 01/25/02

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Administrative Office of the United States Courts  
One Columbus Circle, N.E.  
Suite 2-361  
Washington, D.C. 20544

Senator EDWARDS. Welcome to all of you. Happy to have you here.

Do any of the judges wish to make an opening statement?

Judge DAVIS. I do not, Mr. Chairman.

Mr. HANEN. No, thank you.

Mr. MAYS. No, sir.

Senator EDWARDS. Let me begin with a couple of general questions and we will just go down the line and let each of you comment. I wonder if you would tell me from your experience either as a judge, which some of you are, or as a lawyer, what you think the two or three most important qualities are in a good judge.

Judge Davis, we will start with you.

Judge DAVIS. Thank you, Mr. Chairman. I think that humility is number one, and I think respect is number two. And by respect, I mean respect for the role of the judge, respect for the other branches of government, for the legislature, recognizing their role, for the judiciary, recognizing their role and our duty to follow precedent, and also respect, most especially important, for the attorneys and for the litigants that come before the court, and respect also, I would add, for our juries and for the jury system and the right to trial by jury.

Senator EDWARDS. That is a good answer. I am going to ask the others the same question. Is there any particular trial judge that you particularly admire, and can you tell us why?

Judge DAVIS. Well, oddly enough, I grew up in East Texas and I don't know if you have ever heard of William Wayne Justice. He is a Federal district judge there. He is from a different party and from a completely different end of the political spectrum than I am from, but I had the honor of trying my first case in his court, and I will be sitting in his court if I am fortunate enough to have the Senate confirm me.

And while we disagreed a great deal perhaps politically, I respected him a great deal as a jurist, and his hard-working work ethic and his ability to be fair in the courtroom to all parties from all sides. So that would be a jurist on a very personal level that I would identify with.

I would also add that I have had the privilege of reversing him for the first time he had ever been reversed in a criminal case before, and he did me the pleasure of appointing me to represent a criminal indigent defendant in his court in the same case immediately thereafter. But we formed a long and lasting friendship through that process and he has had hired me as his personal attorney when I was in private practice before.

Senator EDWARDS. Thank you very much, Judge Davis.

Judge Godbey, same questions.

Judge GODBEY. I would agree with what Judge Davis said about the characteristics of a trial judge. I think I might phrase it in terms of courtesy instead of respect initially. You need to treat all the people that come in front of you as human beings and not treat them as objects in a case jacket.

I think also integrity, of course, is extremely important, and probably don't need to elaborate on that. I have found patience to be a highly desired attribute in a trial court judge. You just can't have too much of that.

Senator EDWARDS. You need a lot of it, don't you?

Judge GODBEY. You need a lot of it, yes, sir.

And, lastly, I think I would say open-mindedness, because there are so many cases out there, there are so many statutes. No one can know it all, and I think it is important for judges to have open-mindedness, coupled, I guess, with humility, and be prepared to learn from anyone who is in front of you because they can probably all teach you something you don't know.

Senator EDWARDS. Any particular trial judge you particularly admire and respect, and why?

Judge GODBEY. I am going, if I may, to give you a category in response to that, and that is to refer to my colleagues on the civil district court bench in Dallas, County, Texas. They are as good a group of folks to work with as anybody could ever hope for, and I would not dream to pick a favorite among those lest they hear about it back home, but they are a bunch of good trial judges.

Senator EDWARDS. Thanks, Judge Godbey.

Mr. Hanen?

Mr. HANEN. I agree with the answers concerning temperament that Judge Godbey and Judge Davis elucidated just a minute ago. I would like to emphasize, I guess, the respect for the system. I think those of us that have been involved with the jury system, you know, for any period of time at all have developed a respect for it, and you learn that it works; it is a system that works. So I would emphasize that.

And then lastly I would add a new category to the things they have already mentioned. I always appreciate a judge that rules. I think sometimes situations fester and cases get worse and more complicated because you can't get a ruling out of the court, and I think both sides appreciate a judge that is willing to rule.

As far as judges that I respect, I respect our current Southern District judges quite a bit. They come from both sides of the aisle, but they do a good job of combining intellect and temperament and respect for the system.

Senator EDWARDS. Thank you, Mr. Hanen.

Mr. Mays?

Mr. MAYS. I guess an ideal judge for me would approach every matter intelligently and analytically, would treat every human being who appeared before him or her with dignity and respect, and would be intellectually honest. By intellectual honesty, I mean a judge who is willing to follow the facts and the law where they lead and reach a conclusion based on the facts and the law, and who does not reason backward and find the facts and the law based on a pre-conceived conclusion.

Senator EDWARDS. And a particular judge that you admire and respect?

Mr. MAYS. The finest trial judge I ever appeared before was a Federal district judge in the Western District of Tennessee, Bailey Brown, who went on to serve on the Sixth Circuit. He was appointed by President Kennedy. I tried my first jury case before Judge Brown, and I can assure you he was a very patient, wise judge.

Senator EDWARDS. Thank you, Mr. Mays.

Judge Rose?

Judge ROSE. Thank you, Mr. Chairman. I guess I would agree with my colleagues here as to what the characteristics of a good trial judge would be. I think I would use a little different terminology. I think one of the terms that I would use is to create a feeling of civility in the courtroom, and I think the civility in the courtroom is made up of the respect for the system and an expeditious process, but a process which everyone is confident in and has confidence in.

The objective of a good trial judge is to try a case fairly; not always everything that happens in a case is viewed as fair from the parties, but to try a case fairly and make sure that—or do the best you can to make sure that the people who leave that courtroom believe that their case was tried fairly.

One of the judges that I admire the most is the judge that I am hopefully, if I am fortunate to take the place of, and that is Judge Herman Weber. Judge Weber has always been a person that I have admired. I tried my first trials in front of him, in the Common Pleas Court of Greene County, and of course now he sits as a district judge in the Southern District of Ohio.

Senator EDWARDS. I apologize to the nominees. We are in the middle of a vote that is about to end and I was hoping Senator DeWine would be able to get back, but he has not been able to get back yet. So we will recess now, subject to the call of the Chair, and we will be back.

[The committee stood in recess from 3:37 p.m. to 3:39 p.m.]

Senator DEWINE [presiding]. We don't want you to have too long a break here. [Laughter.]

I think we are setting a new world's record for going back and forth. They told me on the floor we were supposed to have eight in a row, but if you are lucky, you will be done by then.

First of all, thank you all for your testimony so far.

We use the term "judicial temperament" and I guess we all think we know what it is, but I think everyone has maybe a little different idea. It is something that we all, I think, understand is very, very important. Quite candidly, we have seen many great trial judges who have it, and we appreciate what they do and we love them for that. We have also every once in a while seen a few who didn't have judicial temperament, and those are the kind that frankly we don't want to see on the bench.

Considering that this is a lifetime appointment, let me just ask you to define judicial temperament and tell me, as you do that, what you would be concerned about in your own actions on the bench as a trial court judge, if the Senate confirms you.

Let me start with Judge Davis.

Judge DAVIS. Thank you, Senator. Senator, I believe judicial temperament would best be defined as I had mentioned earlier, acting from a position of humility and realizing that you as a judge—and I am a judge now and one of the things I try to instill on our staff on the Twelfth Court of Appeals is that we need to be what I call a user-friendly court, a court that respects the litigants and respects the lawyers that practice before us, not that we are their master, but that we are their servant. We are there to serve them. We are there to help them resolve their disputes by the proper administration of justice, and we have to make tough decisions and

tough calls, but you can do that in a civil manner and in a respectful manner.

And I think, secondly, or finally would be to let the lawyers try their case, to not ever let yourself become an advocate for one side or the other. I have had 23 years of trial experience and I have been with both kinds of judges, and I know the kind that I hope to be and if I am fortunate enough to be confirmed by the Senate plan to be.

Senator DEWINE. Judge?

Judge GODBEY. I agree with much of what Judge Davis said. I think courtesy to the folks in front of you is extremely important. It may be the tenth case of that sort that you have seen that year, but for the people in front of you it may be a defining moment in their lives.

Senator DEWINE. Maybe the only one.

Judge GODBEY. Yes, sir.

Senator DEWINE. And you are the Government. That may be the only experience they ever have, really, that kind of experience.

Judge GODBEY. That is quite true, particularly with jurors, who I think are often treated as conscripts and not given the respect that they need. That may be one of the few opportunities that they individually serve their community and their Government.

I agree with what Judge Davis said about letting the lawyers try their case. I think there is a delicate balance as a trial judge between being in control of the courtroom without having to say a word, and God forbid that you should ever have to bang your gavel. Knowing that it is there ought to be enough for you to be in control of the courtroom.

And then, past that, I think a good trial judge should be invisible and simply be the host for the lawyers and the litigants and provide the opportunity to open the courtroom to them to bring their dispute in most cases to a jury.

Senator DEWINE. Mr. Hanen?

Mr. HANEN. Well, I agree with both what Judge Godbey and Judge Davis just said, and I guess the succinct way of putting it would be to remember you are appointed, not anointed, and that you need to treat the litigants and lawyers with respect, the system with respect, and handle the case as if it were your own.

Senator DEWINE. Mr. Mays?

Mr. MAYS. I think a judge with a lifetime appointment should be able to control a courtroom and should be able to conduct a trial without being obstreperous, without being rude, and without being overbearing. I think also a judge has a great responsibility not to leap to a conclusion, but to patiently hear and weigh both sides of an argument and hear both sides of the case before ruling.

Senator DEWINE. Judge Rose?

Judge ROSE. Agreeing with the other judges, I would also indicate don't forget from where you come. We came from trial attorneys and we all understand how much easier it is to try our case in front of the judge, give our client the representation that they deserve in front of a judge that will allow you to try the case and not cut you off too quickly, not be too arbitrary in rulings, understanding that there are rules and understanding that there are processes. However, give everyone their opportunity to try the case.

Senator DEWINE. Let me ask about how you would control your docket. We know that Federal judges have the same problem, and sometimes to a greater degree the same problem that State court judges have, too many cases to handle. How do you intend to manage that docket?

Take a moment, though, as you explain that to also tell me about what the proper judge's role is in achieving a settlement and how those two play together or come together and maybe how they don't come together. For those of you who have been on the bench either now or at some point in your life, reflect on how you handle that.

Judge Davis?

Judge DAVIS. Thank you, Senator. On the Twelfth Court of Appeals, we have a very large docket, about 450 cases a year that come through, on a 3-judge court, and one of the goals that we set is the timeliness of those cases, to move them as quickly as possible within the confines of what our number one goal is, to correctly apply the rule of law and to develop, deliver a high-quality, scholarly legal product.

So I think those two go hand-in-hand. You can't be too fast to sacrifice the quality, but yet you do have to move your docket, and I think there are a number of tools that can be used to do that in a trial court setting—scheduling orders, helping the attorneys agree upon some dates, and then gently but firmly holding them to what they have agreed to as far as moving cases through the process. I know as a trial attorney, a scheduling order always helped me by knowing, all right, these are the deadlines and the priorities I need to give. So I believe that is a very big tool.

As far as the part of your question, Senator, regarding settlement, I am a firm believer in mediation. I think it can provide great results to help litigants settle their disputes short of a jury trial. But I know as a trial attorney, I never liked a judge who leaned too hard on the parties. I think that is the parties' decision to decide whether a case needs to be settled or not. The judge should be the facilitator of that, but not the pressure point, so to speak. So that would be my view in answer to your question, sir.

Senator DEWINE. Judge Godbey?

Judge GODBEY. I currently preside over a civil trial court with a caseload of about 750 cases. The procedural device that I have found the most helpful is the pre-trial scheduling order. My practice with those is to—in fact, throughout Dallas County, the 13 civil trial court judges use a standard form. My practice is to direct the lawyers to confer and give them the opportunity to tell me what they think is a reasonable schedule and if they agree, I will certainly abide by their request because they know their case better than I do, but then, as Judge Davis said, convey to the lawyers that I believe at that point we have a bargain. We have struck a deal. I have let you tell me how much time you need to get your case ready and now I expect you to perform as you have told me you would do.

A standard provision in our pre-trial scheduling order is a requirement of mediation, which I think is a very helpful practice. In Dallas, we have great results with that as a mode of alternative dispute resolution.

With regard to settlement, my personal practice is to stay pretty much hands-off with that, unless the lawyers ask me to intervene. There are times when it is helpful to the lawyers for their clients to hear something from not them, but someone else. And in those circumstances where the lawyers ask me to, I will tell the parties that I think it is good for them if they are able to reach a settlement and it would save them a lot of wear and tear. But I don't do that unless I am invited, and I certainly think it is not appropriate for judges to pressure lawyers into settling cases as a mode of docket management.

Senator DEWINE. Mr. Hanen?

Mr. HANEN. I agree. I think docket control orders are probably the most effective tool we have used in keeping cases moving. My personal feeling is they really don't work, though, unless the court holds up its half of the bargain. If the lawyers are ready to go, the end of the docket order, the pre-trial conference, and then the actual trial—I mean, those would have to be realistic dates, too, and dates that they really believe are going to happen.

So I believe if I am privileged enough to serve that I will try to make sure from the court's standpoint when those kinds of orders are entered that those dates are realistic and ones that the lawyers and the litigants can depend on as well.

As far as settlement, mediation is very popular in Texas. It has been very effective. I wouldn't limit, if I am confirmed, parties to mediation. There are other forms of alternative dispute resolution which work in various cases. I probably personally would not take an active role unless requested to by both sides.

Senator DEWINE. Mr. Mays?

Mr. MAYS. I think almost everything has been said, but I will say there is no substitute for hard work on the part of the judge in moving a case. It is a non-delegable duty. I think if you have a reputation for moving your docket, if the parties know they are going to move, if they know you are going to try it, the quicker you get toward a trial, the quicker they will settle.

I also believe in alternative dispute resolution. I have been a mediator and I have been astonished at how the most bitterly opposed parties can come together in the right circumstance and reach a rational settlement.

Senator DEWINE. Judge Rose?

Judge ROSE. Agreeing with my colleagues, I would also say that a scheduling order which is realistic to begin with and is held firm to by the court is one of the most important tools. Although I am a great fan, also, of all avenues of alternative dispute resolution—mediation, arbitration—I also believe that the court does need to stay accessible to the attorneys in the case. I stay accessible to the attorneys in the case at their request because sometimes those cases won't resolve unless the judge becomes a part of that discussion.

Senator DEWINE. As you all know, Supreme Court precedents are binding on all lower Federal courts and, of course, circuit court precedents are binding on the district courts as well.

Let me ask each one of you if you are committed to following the precedents of higher courts faithfully and giving them full force

and effect even if you might personally disagree with such precedents.

Judge Davis?

Judge DAVIS. Yes, Senator, definitely. I believe very strongly in the principle of stare decisis and that that is the backbone of our judicial system, and following precedent as a lower court judge would be exactly what I would intend to do.

Senator DEWINE. Judge?

Judge GODBEY. Yes, sir, absolutely.

Senator DEWINE. Mr. Hanen?

Mr. HANEN. I would certainly follow all precedents.

Senator DEWINE. Mr. Mays?

Mr. MAYS. Yes.

Senator DEWINE. Judge Rose?

Judge ROSE. Without question.

Senator DEWINE. Well, I want to thank all of you very much. Let me first thank you very much for your patience in kind of putting up with us going back and forth here, and let me thank you for your time today and thank your families for going through the tension of putting up with this. Even when it is expedited, which for each one of you it has been, I believe, I know if I were in your position I would think it was taking forever. The only consolation to all of you is it is a lifetime appointment, so some things, I guess, are worth waiting for.

Let me thank the staff, Senators Edwards' staff and Senator Leahy's staff, and particularly their judicial nominations staff for their arranging of this hearing. Many times, we forget that in the United States Senate the staff does a great deal of the work. We are the ones who get to be up here and ask questions, but they are the ones who day in and day out do the work. So I want to pay particular attention and thank Senator Leahy's staff and Senator Edwards' staff for getting this hearing prepared.

I would advise each one of you that the record will remain open, which simply means that you could, and very well may, get additional questions from any member of the full committee, and you will have an opportunity then to answer those questions.

So we thank you very much, and the hearing is adjourned.

[Whereupon, at 3:52 p.m., the committee was adjourned.]